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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 287

RONALD J. ABBOUD,
Petitioner,

vs.

STATE OF NEBRASKA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

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vs.

STATE OF NEBRASKA,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Nebraska, entered in the above entitled case on December 16, 1966.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Nebraska was entered on December 16, 1966, and is reported at 181 Neb. 84, 147 N.W. 2d 152. Petitioner's case was consolidated for trial with indictments against Ernest Adams and Stephen Novak; and although each defendant appealed separately, in petitioner's case, the Supreme Court of Nebraska did not consider assignments of error common to the three appeals and discussed in the other opinions. It limited

its opinion in petitioner's case to assignments of error not disposed of in the other opinions. Petitioner has, therefore, printed the opinions and Judgments of the Supreme Court of Nebraska in all three cases in Appendix "A" hereto, infra pp. 31-55.

JURISDICTION

The judgment of the Supreme Court of the State of Nebraska was entered on December 16, 1966, and is printed in Appendix "A" hereto, infra pp. 31-55. Rehearing was denied on February 24, 1967. The jurisdiction of this Court is invoked under 28 U.S.C., § 1257(3).

QUESTIONS PRESENTED

1. Whether petitioner's constitutional rights were violated when the grand jury investigation focused upon him; he was summoned to appear before the grand jury without his attorney, and compelled to take an oath of secrecy.

2. Whether systematic exclusion of certain classes of persons, by unauthorized voire dire examination, in impaneling the grand jury, violated the petitioner's constitutional rights and rendered the grand jury and its indictment of petitioner illegal and void.

3. Whether petitioner received a fair and impartial trial and due process of law in view of the state-wide prejudicial publicity prior to and during the grand jury selection and investigation and prior to and during petitioner's trial.

4. Whether evidence obtained by private electronic eavesdropping of petitioner and prosecution witness in prosecution witness's hotel room, to which

petitioner had been invited, was illegally obtained evidence, an unreasonable search and seizure, and in violation of petitioner's right to privacy.

5. Whether evidence obtained by electronic eavesdropping, when petitioner was incompetent and not in possession of his faculties, constituted involuntary and inadmissible evidence.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an im-

partial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

Omaha, Nebraska, is midwestern city of a little over 300,000 inhabitants.

There is but one newspaper of general daily circulation in the City, "The Omaha World Herald." This newspaper is wholly owned by a multi-millionaire contractor named Peter Kiewit. Mr. Kiewit concerns himself vigorously in matters of "public concern" which, of necessity, include political campaigns for the offices of Mayor and City Council, the governing officers of Omaha, Nebraska.

In 1962, Mr. Kiewit purchased this newspaper for forty million dollars.

The petitioner herein, at the time of the transactions complained of, was also a builder and contractor, 32 years of age.

In October of 1963, a man named John Coleman, 27 years of age, came to Omaha from Chicago (BE 12:13).[1] He is the son-in-law of Ann Landers, who writes for the Chicago Sun Times, a nationally syndicated advice-to-the-lovelorn type column which appears in the Omaha World Herald. John Coleman, upon coming to Omaha, held himself out to be a wealthy potential real estate investor in the Omaha area. He claimed that he had received improper suggestions in connection with proposed zoning of real estate he had just purchased, and he teamed with the Omaha World Herald to set up electronically eavesdropped suites in one of the better hotels to entertain city officials and others. The newspaper employed electronic eavesdrop specialists, including the former agent in charge of the F.B.I., and other investigators to proceed with its work (BE; 38:18-24).

Coleman and the newspaper, supplied gargantuan quantities of alcoholic liquors to be given to the guests in the eavesdropped rooms (BE; 239:3). No local law enforcement officials were informed of the so-called investigation or the electronic eavesdropping; but the

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1 In Nebraska, the transcript consists of all filings, pleadings, motions and Orders in the lower Court, certified to the Nebraska Supreme Court. The evidence and testimony of the trial are contained in the Bill of Exceptions. Therefore, references herein to the transcript are designated (T——) and to the Bill of Exceptions as (B.E.——), showing the page and line number.

newspaper and Coleman hired batteries of private attorneys, both in Chicago and Omaha (BE; 226:14), to give counsel and advice throughout the operation and trial. (One Chicago attorney, John Castle, actually participated in the eavesdropped conversations, which were electronically recorded.) (BE; 428:12-17). Petitioner, Coleman and virtually all others involved in the drinking parties used indelicate "stag party" language in their conversations which were being taped.

On September 25, 1964, the Omaha World Herald printed four full pages (32 columns) of a transcript it had edited from the tapes, and stated: "We invite our readers' attention to the John Coleman story. We hope they will read it in its entirety." The "stag party" words were replaced by blanks which provided little challenge to a reader's imagination (Supp. T. 1-3; Ex. A-G).

In this atmosphere began the prosecution of the petitioner.

Almost immediately after the publication of the purported contents of the eavesdropped tape recordings, a furor was generated by the newspaper, culminating in the calling of a grand jury. It became obvious to everyone that the grand jury was being called (three days after the newspaper publication) to investigate the matters contained in the newspaper publication; and, at that time, the petitioner, together with others concerned, became the objects of the investigation and the targets of the proceeding. A grand jury was called; and the following appeared in the Omaha World Herald on September 26, 1964 (Supp. T. 2; Ex. A-G):

Grand Jury Called

The first grand jury investigation in Omaha in 10 years is going into action.

Douglas County District Court judges, meeting Monday, made the unanimous decision that "a grand jury, having the powers to compel attendance of witnesses, cause witnesses to be sworn, and records to be subpoenaed, be immediately called."

The judges, in a statement issued by Presiding Judge Paul Garotto, went on to say that their decision had met with "the full accord" of County Attorney Donald L. Knowles, and that Mr. Knowles "will be in full charge of the investigation as by law provided."

The judges' decision was brought about, of course, by The World-Herald's publication of the John Coleman story last Friday. In that story, Mr. Coleman implicated Mayor James Dworak and four other Omaha city officials in arrangements to accept payments from him in connection with the rezoning of land.

This newspaper's revelations related primarily to the one incident. We were able to gather the information because of Mr. Coleman's public-spirited cooperation. But we think it is not beyond the realm of possibility that a searching inquiry into this one incident may lead the investigators into other by-ways of Omaha and Douglas County politics.

Moreover, we think the public would feel reassured, and Mr. Knowles would be protected against unfortunate political repercussions, if an able and skilled attorney from outside Omaha—that is, from some other Nebraska community—were assigned to the grand jury as its prosecutor.

We believe the great majority of Omaha citizens will welcome the district judges' decision, and will hope that no stone will be left unturned in the presentation of evidence to the grand jury.

Prospective grand jurors were specifically interrogated about their acquaintance with the principals mentioned in the published tape recordings; and the presiding Judge, in his charge to the grand jury, stated:

> "Allegations and statements, both verbal and printed have been made, written and published by individuals and the news media, to the effect that violations of the laws of this State have been committed by individuals and public officials. Therefore, in view of this situation, the Judges of the District Court of Douglas County, Nebraska, on their own motion and as by law provided, this Grand Jury has been duly called, its members drawn and selected, and you are here in response to that call and selection." (T-8)

The five persons suspected were subpoenaed to appear before the grand jury; and forced to enter the grand jury room to be quizzed by the prosecutor and grand jurors, despite pronouncements that they did not wish to be so interrogated without the presence of their counsel, as provided by the Sixth Amendment. Indictments were returned (T-22, 25) against each of the persons referred to in the newspaper publicity and in the eavesdropped hotel conversations.

The case of petitioner and two other indicted defendants were consolidated for trial (T-81). All preliminary matters before the trial Court, from the time of indictment, were presented and treated as consolidated matters, including the arguments on the motions to quash, pleas in abatement and demurrers.

The matter having become a cause celebre, a careful screening of grand jurors ensued, occasioned by the high resolve of the presiding Judge to insure a blue-ribbon grand jury. The grand jury selected from the three hybridized grand jury lists, included, among its sixteen members, six, including the foreman, who, prior to selection, had openly demonstrated antagonism toward the city administration of which petitioner was a part, by participating in an abortive political campaign (T-55, 58) to recall the Mayor, who was also indicted with petitioner.

In pursuance of the objective of securing a high class grand jury, there was systematic exclusion of several different classes of jurors. As far as the record in this case, such systematic exclusion was tacitly admitted by the prosecution, as will be discussed in connection with the ruling on the plea in abatement.

The grand jury so chosen indicted the petitioner and all others against whom the journalistic finger of suspicion had been pointed in the earlier newspaper publicity (T-22, 25).

The first challenge to the indictment filed by petitioner and others was the Motion To Quash (T-26, 29). This motion raised, with great particularity, the illegality of the grand jury; the prejudicial aspects of petitioner appearing under compulsion, by subpoena, and without legal counsel before the grand jury; and he invoked specifically the guarantees of the IV, V and VI Amendments of the Constitution of the United States.

The Motion To Quash was overruled (T-46); a part of the opinion in support of the ruling reads as follows:

> "The defendants were at no time forced to give any testimony. They were never deprived of the right to counsel when they appeared before the Court. But the defendants insist that they wanted their counsel in the Grand Jury room when the defendants would testify. There is no statutory provision for said counsel to be in said room. The Grand Jury is not a trier of the facts. It is an investigating body with the sole function of ascertaining if a crime had been committed and if there is probable cause to believe that the defendants have committed it. The Grand Jury does not convict or acquit, it merely returns "A True Bill" or indictment or "No Bill", no indictment" (T-46).

The next attempt by petitioner to protect his constitutional rights was the filing of a Plea In Abatement (T-54). That plea charged there had been no competent evidence whatsoever before the grand jury; that the indictment was based on illegally wiretapped and eavesdropped evidence, in violation of the Constitutions of Nebraska and the United States; that there had been systematically excluded from the grand jury salaried persons, members of the working classes generally, members of labor unions and negros; that the forced appearance of petitioner before the grand jury, without his counsel had prejudiced him and violated his rights under the VI Amendment of the Constitution of the United States.

To these serious factual charges, well pleaded, the State of Nebraska incomprehensively demurred (T-69). The demurrer was sustained by the trial Court (T-71).

Briefly stated, the newspaper with the help of Coleman set out to lay a trap for certain public officials of the incumbent political administration in our city. In furtherance of this objective, this newspaper hired investigators and professional eavesdroppers to secrete and install electronic devices in hotel rooms to which the intended victims were to be invited. The newspaper and John B. Coleman purchased astounding amounts of alcoholic beverages to be served to the intended victims of the plot (BE V, Ex. 13, 26). Petitioner himself was served and consumed large amounts of intoxicating beverages, after which tape recordings were surreptitiously made of his conversations with Coleman, who, of course, knew of the presence of the electronic equipment.

Petitioner timely challenged the introduction of the taped conversations by a Motion To Suppress (T-90) (which was renewed throughout the trial), alleging, inter alia, illegal search and seizure, in violation of the Fourth, Fifth and Fourteenth Amendments To the Constitution of the United States; illegal invasion of petitioner's right to privacy; and that the prosecuting witness did "ply the defendant with intoxicating liquors to such an extent that the defendant became extremely intoxicated and was not in possession of his normal mental faculties, and that what purports to be defendant's statements on those occasions should be suppressed as being involuntary and irrational" (T-90).

Although admitting through its witnesses that large quantities of alcoholic beverage had been consumed by petitioner and others, the State placed the tapes of the eavesdropped conversations in evidence without making any attempt to lay a proper foundation that the statements of petitioner and others were voluntary (BE 837: Ex. 28-38), despite the fact that the issue had been raised by the Motion To Suppress (T-90) and by repeated objections during the trial; as well as his motion for directed verdict at the conclusion of the State's case (BE 897). All of these objections were summarily overruled. The tape recordings were offered and received in evidence, and were played for the jury in their entirety (BE 837).

Although no witness in the trial identified any of the voices on the tapes, the Omaha World Herald (Nov. 9, 1965, p. 1) again kindly obliged by supplying in its daily coverage of the trial its opinions as to the authorship of the statements appearing on the tapes. An example: (Supp. T. 1-3: Ex. A-G)

'John, Can't Take Check'

Bribe Jury Completes Six Reels of Tape

By Larry Wilson

"John, I can't take a check."

Those words were among those emerging from tape recordings Tuesday as the John B. Coleman case continued in District Court before a jury of six men and six women.

Charged with soliciting bribes in the case are Ronald J. Abboud, real estate man, and ex-Councilmen Ernest Adams and Stephen Novak.

According to previous testimony, Mr. Coleman and Mr. Novak were present when the recording was made.

A voice resembling that of Mr. Coleman answered: "All right. What shall I do?"

There was talk about a cash payment and the Coleman voice asked if a check should be made out to "Abboud."

The Novak voice objected to that and the Coleman voice asked:

"What if I put 'commission' on it?"

The Novak voice again stressed the importance of a cash transaction.

Mr. Coleman testified earlier that Mr. Novak was to get 10 thousand dollars for a favorable vote on his zoning application. He said Mr. Adams was to get five thousand dollars and Mr. Abboud a profit of about 100 thousand dollars from his apartment construction contract.

On another tape, with Messrs Coleman, Abboud and Novak present, the Coleman voice asked:

"How much does Adams want?"

A voice resembling that of Mr. Abboud replied: "Five."

Six of the 11 reels of tape admitted into evidence had been heard at the noon recess.

On Monday, the first day of the tapes, spectators said they could only make out a word

This type of coverage was available daily throughout the trial in three editions; and this newspaper being the only newspaper of general circulation in the area, we must take the liberty of assuming that it was at least available for reading by each and every juror in their homes each night during the trial. (Samples of the daily trial copy are set out in Appendix B, pp. 8-17).

Petitioner was convicted on three counts of aiding and abetting Ernest A. Adams and Stephen T. Novak, members of the City Council, in soliciting, proposing or agreeing to receive bribes, in violation of section 28-708, R.R.S. Nebraska, 1943. His motions for new trial and arrest of judgment were overruled (T-149); and he was sentenced to imprisonment at hard labor for a period of one year on two counts of the indictment, said periods of imprisonment to run consecutively; and one year imprisonment on the third count of the indictment, to run concurrently with the sentence previously imposed. He was fined $300.00 and ordered to pay the costs of the action (T-151).

The case was appealed to the Supreme Court of Nebraska.

In disposing of petitioner's assignment of error that his constitutional rights were violated when the investigation had focused upon him and he was summoned to appear before the grand jury, compelled to take an oath of secrecy and appear without his attorney, the Nebraska Supreme Court (at 147 N.W. 2d 152, 154), stated that the defendant had been cautioned as to his privilege against self-incrimination, had

claimed the privilege, and the privilege was sustained by the trial Court. The assignment of error was, therefore, held to be without merit.

The petitioner, in his Plea In Abatement (T-56) charged as follows:

> "That in selecting the said grand jury, the following classes of registered voters were systematically excluded: Salaried persons and members of the working classes generally, and, in particular, such persons as were members of labor unions."

The Supreme Court of Nebraska (147 N.W. 2d 144, 148), limited its discussion of this assignment of error and stated that the Demurrer to the Plea In Abatement was properly sustained:

> "The defendant does not claim intentional or systematic discrimation or exclusion of the members *of his race* from the grand jury" (147 N.W. 2d, at 148) (Emphasis ours).

The Nebraska Supreme Court completely omitted, in all three opinions, ruling on petitioner's assignment of error that massive persuasive and prejudicial publicity preceding and attending the prosecution prevented petitioner from having a fair trial, and was a deprivation of due process under the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Nebraska disposed of petitioner's assignment of error that the electronic recordings were illegal and unconstitutionally obtained evidence; that they were an unreasonable search and

seizure and an invasion of his right to privacy; and constituted involuntary and inadmissible evidence given while he was incompetent and not in possession of his mental faculties, by holding that the conversations were between Coleman and petitioner and other members of the conspiracy while Coleman was present; that Coleman testified concerning these conversations, and the recordings merely corroborated his testimony as any other witness present might have done (147 N.W. 2d 152, 155; 147 N.W. 2d 156, 158).

The judgment of the District Court was affirmed; and the Motion For Rehearing was denied, February 24, 1967 (147 N.W. 2d 152, 155).

REASONS FOR GRANTING THE WRIT

1. Petitioner's Constitutional rights were violated when he was compelled to appear before the grand jury in an accusatory proceeding without counsel, and was required to take an oath of secrecy.

This Court, in *Gideon v. Wainright,* 372 U.S. 235, 83 S. Ct. 792, held that the Sixth Amendment right to counsel in criminal cases bound states to the Fourteenth Amendment. The right to counsel arises when the proceeding shifts from the investigatory to the accusatory stage (*Escobedo v. Illinois,* 378 U.S. 478, 84 S. Ct. 1758). That right applies to every critical stage of the proceeding against the petitioner.

The record in this case establishes: Wide-spread, continuous and intensive newspaper, radio and television news stories, beginning with the first revelation of the so-called "John Coleman Story", and continuing

without interruption to the time of the summoning of the grand jury and, during the period the grand jury was sitting, all definitely pointed to petitioner Abboud, as one of the accused or suspected persons along with other co-defendants in an alleged conspiracy to violate the bribery laws.

The tenor of the questioning of those summoned for grand jury duty was such as to indicate to the prospective jurors that petitioner Abboud and the other defendants were the persons at whom the grand jury investigation was being directed.

Before petitioner was summoned as a witness to testify before the grand jury, there had already appeared and testified John B. Coleman, attorney Ronald Hunter, ex-F.B.I. man Joseph Thornton, John Castle and Attorney Jay Carroll, all of whom were prosecution witnesses at the trial. The tapes of the hotel room conversations had already been played to the grand jury.

In this setting, the petitioner was summoned to appear before the grand jury, compelled to take an oath of secrecy and then, after giving his name and address, invoked his Constitutional rights under the Fifth Amendment. He was forced to appear before the grand jury without counsel; and he was, therefore, denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States. There can be no doubt here that the accusatory stage had been reached by the time the petitioner was called before the grand jury. The proceedings had focused on him; and this

was no "general investigation of an unsolved crime." This was a critical stage of the proceedings; and to compel petitioner, a layman, to appear before the grand jury under these circumstances amounted to a denial of the effective assistance of counsel at a critical stage when the proceedings were at the accusatory stage.

Petitioner was thus placed in a situation where not to speak in answer would seem to confess guilt to the grand jury, and would probably be more prejudicial than to give full utterance. If he appeared without counsel and testified, he may build a case against himself, thus forfeiting his Constitutional privileges against self-incrimination.

What this Court said in the landmark case of *Escobedo v. Illinois,* 378 U.S. 478, 486, 84 S. Ct. 1758, 12 L. Ed. 2d 977, must be said of the need for counsel before the grand jury:

> "The guiding hand of counsel was essential to advise petitioner of his rights in this delicate situation. *Powell v. Alabama,* 287 U.S. 45, 69, 53 S. Ct. 55, 77 L. Ed. 158."

What could have happened at this interrogation would certainly affect the whole trial (*Hamilton v. Alabama,* 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 114).

Like a trial, a grand jury investigation of a crime is a "criminal case" at which incriminating questions need not be answered (*Counselman v. Hitchcock,* 142 U.S. 547, 562, 12 S. Ct. 195, 35 L. Ed. 1110). At a trial, putting an accused on the witness stand without his

consent and asking him anything at all would violate his Constitutional privilege against self-incrimination. We think taking him before the grand jury without his consent and asking him anything violates his privilege (*Jones v. United States,* 119 U.S. App. D.C. 284, 342 F. 2d 863, 867-868). A grand jury witness, more so than *Escobedo,* is a captive witness, forced to submit to questioning. This Court took pains to note in *Escobedo* that:

> "Although petitioner was not formally charged, he was in custody and couldn't walk out of the door (378 U.S. at 479, 84 S. Ct. at 1759)."

Neither, of course, could a subpoenaed witness before a grand jury. In the grand jury setting, a witness is neither, technically nor in reality, free to terminate the questioning. He is definitely deprived of his freedom of action in a significant way.

This Court stated, in *Miranda v. Arizona,* 86 S. Ct. at 1628, 16 L. Ed. 2d at 723:

> "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present."

Should the results be different here, where an accused is summoned before a grand jury whose investigation has focused upon him and he is forced to appear before that grand jury, compelled to take an oath of secrecy, and appear without an attorney?

2. Petitioner contends that the systematic exclusion of certain classes of persons by unauthorized

voir dire examination in empaneling the grand jury violated the petitioner's Constitutional rights and rendered the grand jury and its indictment of petitioner illegal and void.

In his Plea In Abatement, filed to the indictments returned (T-54), petitioner alleged that the check sheet for grand jurors and questions related to it asked by the grand jury board constituted a prejudicial, misleading, incomplete, incorrect and unlawful voir dire examination of prospective grand jurors, identified the John Coleman story as the subject matter under investigation, and identified petitioner and persons similarly situated as persons accused of unlawful conduct, and, therefore, caused the grand jury to be predisposed to accept the John Coleman story and to be prejudiced against the petitioner and the others similarly situated; that an imbalance, prejudicial to petitioner, was created in the grand jury because persons with knowledge of, or acquaintanceship with, the petitioner and others similarly situated were excused or disqualified from service as grand jurors and persons with knowledge or acquaintance with John B. Coleman and his associates were not so disqualified. The grand jury was caused not to be proportionately representative of the population of Douglas County, Nebraska, and of the races and classes of persons therein residing; and the residents of the sections identified as South Omaha, East Omaha and North Omaha were largely excluded. The grand jury board, in making its selections, systematically excluded from said grand jury members of the Negro

race; and, although a proportionate number of Negros were drawn in the total of 120 prospective jurors, all of them were rejected summarily as unfit for grand jury service despite the fact that their qualifications were comparable to and, in some instances, superior to the qualifications of persons of the white race chosen to serve as grand jurors. Further, in selecting the said grand jury, the following classes of registered voters were systematically excluded: Salaried persons and members of the working classes generally; and, in particular, such persons as were members of labor unions.

To these well pleaded factual charges, the State of Nebraska demurred. The demurrer was sustained.

Petitioner alleges here that his Plea In Abatement stated a meritorious complaint which could not properly have been disposed of by a demurrer.

This Court held in *Thiel v. Southern Pacific Company,* 328 U.S. 217, that the deliberate and systematic exclusion of daily wage earners from the jury list, because of the supposed hardship which jury service visits on them, requires the Supreme Court, in the exercise of its power of supervision over the administration of justice, to reverse the judgment, regardless of whether the complaining party was in any way prejudiced by the wrongful exclusion or whether he was one of the excluded class.

The Plea In Abatement filed by petitioner raised basic issues of constitutional law which have been

passed upon by this Court in several celebrated decisions. In *Patton v. State of Mississippi,* 332 U.S. 463, this Court held that the exclusion of Negros from grand and petit juries, solely because of their race, denies Negros in criminal cases equal protection of the law, regardless of whether such discrimination is embodied in statute or is apparent from administrative practices.

This Court is well aware that an intentional, planned and deliberate exclusion of, or discrimination against, members of a particular political or economic group, religious faith, race or sex by officers in charge of the selection and summoning of jurors is in contravention of the Constitutional right to jury trial and of the "due process" and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States. Any such exclusion, distinction or discrimination is ground for a challenge to or motion to quash the array or panel on the part of such accused or litigant.

Petitioner here contends that the grand jury's indictment returned against him is illegal and void.

3. Petitioner here was subjected to massive persuasive and prejudicial publicity which preceded his indictment and attended his prosecution. He, therefore, did not receive a fair trial, consistent with the due process clause of the Fourteenth Amendment (*Bridges v. California,* 314 U.S. 252). The prejudicial publicity against petitioner commenced on September 25, 1964, the day the "John Coleman Story" burst

upon the public in a 5½ page story in the Omaha World Herald, and continued to appear daily in that newspaper, and was echoed by other news media until the trial ended. The publicity in this case was not detached, objective reporting of the commission of acts by wrongdoers detected and apprehended by law enforcement officials. It was a play-by-play account of an alleged entrapment of public officials, through a scheme carefully conceived, carried out and financed by a newspaper on the eve of a municipal election. The World Herald was, to all intents and purposes, the real prosecutor in this case. It had an interest which inevitably colored and warped its treatment of the news, and was a more aggravated abuse of freedom of the press than that considered by this Court in *Sheppard v. Maxwell,* 384 U.S. 333. This Court, in that case, held that, because of the failure of the trial Judge to protect Sheppard sufficiently from the massive persuasive and prejudicial publicity which attended his prosecution, he did not receive a fair trial consistent with the due process clause of the Fourteenth Amendment; and this Court, therefore, reversed his conviction.

Petitioner has set forth examples of the daily publicity which attended the trial (Appendix B, pp. 8-18), together with the purported transcript of the hotel room conversations, which transcript, the evidence shows, had been carefully edited before publication by the newspaper, with voices identified and editorial matter inserted. None of this was received in evidence during the trial, except in the form of recordings which were largely inaudible, garbled and unidentified as to voices. Nevertheless, the public, from whom the grand

and petit juries were ultimately selected, as well as public officials, were exposed to this highly prejudicial material never received in evidence at the trial.

The prospective grand jurors were questioned as to whether they had read about the John Coleman story in the newspaper; and one grand juror, who was selected and served, stated that he had "made up my mind from newspapers" (T-54).

This Court, in *Sheppard v. Maxwell,* 384 U.S. 333, pointed out that:

> "Legal trials are not like elections, to be won through the use of the meeting hall, the radio and the newspaper." Citing *Bridges v. California,* 314 U.S. 352 at 271.

This Court has always insisted that no one be punished for a crime without "a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power" (*Chambers v. Florida,* 309 U.S. 227).

This petitioner earnestly contends that his Constitutional rights to a fair trial were violated and that, under the Fourteenth Amendment, he is entitled to have his conviction reversed.

This Court has dealt with the general question of invasive news media vitiating by their conduct a state criminal judgment (*Irvin v. Dowd,* 366 U.S. 717; *Rideau v. Louisiana,* 373 U.S. 723; *Estes v. Texas,* 381 U.S. 532). However, this case presents new and important questions, different than those heretofore considered. Petitioner's case involves a newspaper which

instituted a calculated campaign to have petitioner and other city officials indicted, arrested and convicted by its contrived and malicious conduct. Petitioner was so thoroughly tried and convicted by the Omaha World Herald that a fair trial in the Court room could not, and did not, occur.

4. The record in this case shows that a conspiracy was entered into by John B. Coleman and members of the Omaha World Herald to lay a trap for certain public officials; that, in pursuance of that conspiracy, hotel rooms were rented and electronic devices set up, whereby conversations could be recorded on tape, described as miniature broadcasting stations; and the means employed were concealed wireless microphones with a range of 15 feet, broadcasts from which were received in another hotel room on radio receiving sets and then transferred to a tape recorder; that John B. Coleman invited the petitioner and, using petitioner as a go-between, lured co-defendants and others to the hotel room where Coleman broached the subject of and readily offered bribes to the public officials. All of these conversations were recorded without the knowledge or consent of petitioner or the co-defendants. Furthermore, no law enforcement agency or officer was ever consulted or informed of these activities until completion and transcription. Alleged copies of the recordings were ultimately turned over to the County Attorney, who offered them in evidence against petitioner as containing alleged admissions of guilt. They were received in evidence over objection.

These tape recordings contained hearsay statements and extra-judicial declarations of other individ-

uals who were not called as witnesses, and contained self-serving hearsay declarations of those who later were witnesses for the State against petitioner. The recorded statements are fragmentary, incomplete and broken, so as to be frequently misleading and often unintelligible. Furthermore, the State was unable to produce any competent evidence to distinguish one voice on the tape recordings from other voices; and the jury was left to speculate concerning who spoke what.

The tape recordings in this case were obtained by "conduct that shocks the conscience" (*Rochin v. California,* 342 U.S. 165, 172, 72 S. Ct. 205, 209); and it disregards the right of privacy of petitioner and the others. To invite men to a hotel room, ply them with liquor, seek their advice, and pretend friendship to cause them to reveal their private thoughts so they can be overheard and recorded, violates fundamental concepts of decency and fair-play; and evidence thus obtained should have no place in the law of a free society.

Petitioner's case is distinguishable from *Osborn v. United States,* 385 U.S. 323, 17 L. Ed. 2d 394, wherein the Court held:

> "There is no question of the accuracy of the recording. The petitioner testified that it was a substantially correct reproduction of what took place in his office on the date in question."

In this case, no one testified that the tapes were an accurate reproduction; and even prosecution witness John B. Coleman did not attempt to identify his own

voice, much less the voice of any other speaker. This case can further be distinguished from *Osborn v. United States*, 385 U.S. 323, 17 L. Ed. 2d 394, in that, in the *Osborn* case, use of the electronic device to record the fateful conversation was approved by the two Judges of the District Court in advance of its use; and, in the present case of petitioner, no law enforcement agency, local, State or Federal, was ever consulted or informed of the activities of the Omaha World Herald and John B. Coleman until they had the tape recordings made, the transcriptions reproduced and the matter printed in the World Herald.

Before a tape recording may be admitted into evidence, the genuineness or authenticity of the recordings must be established; and a proper foundation of evidence to authenticate the tapes must include an identification of the speaker. In this case, there was no evidence identifying any of the voices on the tapes; and the record shows that the tapes are replete with hearsay, in that people wandered in and out of the Coleman suite over a period of several days while the recordings were being made; and, while there, they repeated rumors, gossip and all the talk of the street. The recordings contained many voices of people not a part of either the conspiracy to bribe or the purported conspiracy to be bribed; and all of these were recorded. All of this obvious hearsay evidence was played to the jury.

The rules which exclude unconstitutional evidence from being admitted in a state criminal trial are founded in the Fourth and Fourteenth Amendments

to the Constitution of the United States (*Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684). The tapes were obtained when the individuals were invited to a hotel room, plied with liquor, inveigled into a friendship, and were controlled solely by John B. Coleman and his confederates. The result was self-serving tapes, in which it was possible for the operator to shut out or blur parts of a conversation by means of a volume control and later pick it up again, thus eliminating unfavorable testimony. The persons being taped were goaded into making derogatory remarks; and their discussions were deliberately prolonged under the guise of friendship and while plied with liquor, and when they had no knowledge that a record was being made of what was said.

The entire record here is replete with the "dirty business" mentioned by Justice Holmes in *Olmstead v. United States*, 277 U.S. 438, 470, 72 L. Ed. 944, 952, 48 S. Ct. 564.

5. Petitioner contends that evidence obtained by electronic eavesdropping when petitioner was incompetent and not in possession of his faculties constituted involuntary and inadmissible evidence.

It is to be noted in the record of this case that petitioner did not, at any time, receive any monies. His purported role as aider and abettor is predicated solely upon conversations in which he allegedly participated. The record further shows that his participation in such conversations, if any, were under the influence of intoxicating liquors; and he specifically

raised the issue in the record here of whether or not his spoken word was or was not voluntary or, to the contrary, was a product of a tongue loosened and distorted by the use of alcoholic beverages.

All of the decided cases, with respect to intoxication as establishing the involuntariness of a statement or a confession given, concern themselves with extra-judicial declarations introduced either as confessions or admissions against interest. This case is unique in that, for the first time, a question arises as to whether or not oral declarations which constitute in themselves the commission of a crime are subject to the same rule with respect to the test of voluntariness. In this case, the actual commission of an alleged crime depends upon the statement made by the petitioner — not after-the-fact confessions or admissions. The very gist of the crime is the conversation concerned. Where the same rules apply concerning such statements, the statements themselves are made the gist of the crime.

Petitioner contends these are to be considered in the same light as were the post-crime statements of the defendant in the case of *Logner v. State of North Carolina,* 260 F. Supp. 970; and, therefore, the pleadings filed by petitioner herein raised the question of voluntariness of the statements. Petitioner further contends that the burden was then upon the State to lay a foundation of sobriety. The burden shifted from the defendant to the State as foundational, to establish the sobriety of the petitioner before the alleged statements made both to the witness, John B. Coleman, in person and as recorded on the eavesdropped

tapes. The lack of this foundation constituted a violation of the Sixth and Fourteenth Amendments to the Constitution of the United States; and the evidence should have been excluded.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 24, 1967

APPENDIX A

Supreme Court of Nebraska Opinions[2]

State v. Adams, 181 Neb. 76-84

Heard before WHITE, C. J., SPENCER, BOSLAUGH, BROWER, and MCCOWN, JJ., and MANASIL and HASTINGS, District Judges.

BOSLAUGH, J.

The defendant, Ernest A. Adams, was convicted of soliciting, proposing, or agreeing to receive a bribe in violation of section 28-708, R.R.S. 1943. His motion for new trial was overruled and he has appealed.

This case arose out of an application to rezone a tract of land at Eighty-first Street and Farnam Drive in Omaha, Nebraska. The application was first presented to the planning board and then submitted to the city council. The defendant was a member of the city council and voted for the rezoning. The State's theory of the case is that the defendant, in conspiracy with others, solicited, proposed, and agreed to receive a bribe in the amount of $5,000 for a favorable vote on the rezoning application.

The defendant, who was charged by indictment, filed a lengthy plea in abatement attacking the indictment and the proceedings of the grand jury. The trial court sustained a demurrer to the plea in abatement. The defendant contends that the demurrer should have been overruled because the plea in abatement alleges that members of the negro race were

2 The Nebraska Supreme Court does not render a separate Judgment. The Opinion of the Nebraska Supreme Court also constitutes the Judgment.

excluded from service on the jury; that six of the grand jurors had signed recall petitions against Mayor James J. Dworak; and that one grand juror had answered a questionnaire by stating: "Made up my mind from newspapers."

"The demurrer to the plea in abatement was properly sustained. The defendant does not claim intentional or systematic discrimination or exclusion of the members of his race from the grand jury. See 24 Am. Jur., Grand Jury, § 27, p. 851. In this state the only objection to the grand jury which can be made by a plea in abatement is to show that the jurors lacked the positive qualifications demanded by law. Krause v. State, 88 Neb. 473, 129 N.W. 1020, Ann. Cas. 1912B 736.

The defendant contends that the statute under which he was charged is so vague and indefinite that it is invalid. Section 28-708, R.R.S. 1943, provides: "Whoever offers or attempts to bribe a public officer and every public officer who solicits a bribe or proposes or agrees to receive a bribe in any case shall be fined in a sum not exceeding five hundred dollars nor less than three hundred dollars, and shall be imprisoned in the Nebraska Penal and Correctional Complex for the period of one year."

We think the meaning of the statute is clear and definite. The Legislature has provided that the attempted bribery of a public officer or the solicitation or agreement to receive a bribe by a public officer shall be a felony. McMartin v. State, 95 Neb. 292, 145 N.W. 695.

The defendant points out that other sections relate to specified circumstances under which attempted bribery or the solicitation of a bribe is only a misdemeanor. These sections do not have the effect of making section 28-708, R.R.S. 1943, vague and indefinite even though it may be possible that a particular act may be punishable under more than one section of the law.

The indictment against the defendant originally contained three counts. The first count charged that from June 3, 1964, to September 28, 1964, the defendant as a city councilman conspired with Ronald J. Abboud, Carville R. Buttner, and Steve Novak to accept a bribe for a favorable vote on a rezoning matter. The second count charged that the defendant, as a member of the city council, received $5,000 on September 15, 1964, for a favorable vote on a rezoning matter. A demurrer to these counts was sustained.

The third count, upon the defendant was convicted, charged that the defendant, from June 3, 1964, to September 28, 1964, "* * * being a City Councilman of the City of Omaha, Nebraska, did unlawfully solicit, propose, or agree to receive a bribe, to-wit: the sum of $5,000.00 from John B. Coleman * * *." The defendant contends that the demurrer to this count should have been sustained because it did not allege in sufficient detail the circumstances of the crime charged.

An information or indictment must inform the accused, with reasonable certainty, of the charge being

made against him in order that he may prepare his defense thereto and also be able to plead the judgment rendered thereon as a bar to later prosecution for the same offense. State v. Buttner, 180 Neb. 529, 143 N.W. 2d 907. But it is generally sufficient to allege the crime in the language of the statute. Sedlacek v. State, 147 Neb. 834, 25 N.W. 2d 533, 169 A.L.R. 868. It is not necessary to state the detailed particulars of the crime in the meticulous manner prescribed by the common law. Cowan v. State, 140 Neb. 837, 2 N.W. 2d 111.

An indictment or information alone need not be full protection against double jeopardy because a defendant may allege and prove facts outside the record in support of a plea of former adjudication. Cowan v. State, *supra*. The remedy of a bill of particulars is available to assist a defendant in preparing his defense and to protect him against a second prosecution for the same offense. Myers v. United States, 15 F. 2d 977.

In this case Count III of the indictment was in the language of the statute and identified the person solicited, proposed, or agreed with. The particular transaction was alleged in greater detail in the first two counts; and although these counts were dismissed, they did serve some purpose in advising the defendant as to the nature of the charge against him. See Bartley v. State, 53 Neb. 310, 73 N.W. 744. There was no defect or imperfection in Count III of the indictment which prejudiced the substantial rights of the defendant upon the merits. § 29-1501, R.R.S. 1943. The demurrer was properly overruled as to Count III.

Upon the motion of the State, the indictment against the defendant was consolidated for trial with indictments against Ronald J. Abboud and Stephen T. Novak. The defendant's later motion for a separate trial was overruled. The defendant contends Article I, section 6, of the Constitution of Nebraska, which provides that the "right of trial by jury shall remain inviolate" guarantees the right to a separate trial. The defendant's theory is that the 1957 amendment to section 29-2002, R.R.S. 1943, was ineffective because of this constitutional provision.

The constitutional provision was intended to preserve the right of trial by jury as it existed at common law and under the statutes in force when the Constitution was adopted. State v. Houser, 137 Neb. 138, 288 N.W. 518; Bell v. State, 104 Neb. 203, 176 N.W. 544. The former right to separate trials of defendants who were jointly indicted was statutory in origin. See G. S., § 465, p. 825. The right was not of common-law origin and was not guaranteed by the Constitution.

The right to a separate trial now depends upon a showing that prejudice will result from a joint trial. State v. Brown, 174 Neb. 387, 118 N.W. 2d 328; State v. Hall, 176 Neb. 295, 125 N.W. 2d 918. The defendant argues that he was prejudiced in this case because he was prevented from using the testimony of his codefendants. The defendant relies upon United States v. Echeles, 352 F. 2d 892, in support of this contention. In the Echeles case a codefendant had made prior statements to the effect that the defendant was blameless, and it was held that this circumstance required

that a separate trial be granted. The record in this case does not show that the the defendant would have been able to benefit from any testimony of his codefendants if his motion for a separate trial had been granted. The record does not show an abuse of discretion in refusing to grant the defendant's motion for a separate trial.

The principal witness for the State was John B. Coleman who wanted the property rezoned so that he could construct an apartment development on the site. Coleman testified at length concerning conversations with the defendant and other members of the conspiracy. Much of the evidence against the defendant Adams consisted of statements made to Coleman by other members of the conspiracy out of the presence of the defendant. The defendant contends that this evidence should not have been admitted because there was no independent evidence of the conspiracy.

Where there is proof of a conspiracy, the acts and declarations of a conspirator in furtherance of the conspiracy are the acts and declarations of all and may be admitted in evidence against the other conspirators. Lamb v. State, 69 Neb. 212, 95 N.W. 1050. The fact of the conspiracy may be proved by circumstantial evidence and the order of proof is a matter within the discretion of the trial court. O'Brien v. State, 69 Neb. 691, 96 N.W. 649.

The record shows that the rezoning was approved by the city council on September 15, 1964. Coleman testified that the defendant and Ronald J. Abboud

came to Coleman's hotel room that evening and that Abboud handed a piece of paper to the defendant which the jury could find was a check in the amount of $5,000 from Abboud to the defendant. The following day Coleman gave Abboud a check for $5,000 to reimburse him for the payment to the defendant.

Coleman further testified that the defendant returned to Coleman's hotel room on September 22, 1964, and complained that the $5,000 check from Abboud had been returned unpaid. The conversation took place in the presence of John W. Castle, a lawyer from Chicago, Illinois, employed by Coleman.

Castle identified exhibit 8 as being a photostatic copy of the check which Adams showed to Coleman and Castle at that time. The check was in the amount of $5,000, dated September 16, 1964, drawn on the account of Abboud Investment Company, Inc., and payable to Ernest A. Adams Real Estate Trust Acct. The check had been returned unpaid for the reason that it was drawn on uncollected funds. It was apparent from the conversation that the check from Abboud to Adams represented the payment that had been made by Coleman to Abboud for the benefit of Adams, but that Abboud had given Adams a bad check. Adams was complaining to Coleman about the Abboud check because it represented the payment from Coleman to Adams made through Abboud.

The evidence was sufficient for the jury to find that a conspiracy existed and that the defendant was a member of it. The statements made by the other

members of the conspiracy out of the presence of the defendant were admissible against him.

The evidence in this case, although largely circumstantial, was sufficient to permit the jury to find the defendant guilty. The jury was not required to accept the defendant's explanation concerning the $5,000 check he received from Abboud. It is not the province of this court to resolve conflicts in the evidence, pass on the credibility of witnesses, or weigh the evidence. State v. Sheldon, 179 Neb. 377, 138 N.W. 2d 428.

During his testimony, Coleman was permitted to refer to a memorandum, exhibit 11, which had been prepared from notes made by the witness and one of his attorneys. The defendant contends that this was improper because the memorandum had been prepared in part from notes made by the attorney, and the testimony did not show when the notes were made.

Coleman testified at length in regard to transactions and conversations with a large number of persons which occurred over a period of about 6 months. He testified that the memorandum had been made under his supervision, that it was based on notes that he had made at the time the incident had occurred, and that after referring to the notes he had a present recollection of the events as they occurred. He referred to the memorandum for the purpose of refreshing his recollection as to dates and similar details.

The testimony of Coleman was based upon his independent recollection of the events referred to. Such

a witness may use original memoranda or a copy prepared by himself or another to refresh his recollection. See, Anderson v. State, 150 Neb. 116, 33 N.W. 2d 362; Erdman v. State, 90 Neb. 642, 134 N.W. 258, Ann. Cas. 1913B 577; 58 Am. Jur., Witnesses, § 584, p. 326; 98 C.J.S., Witnesses, § 358, p. 83. The use of the memorandum in this case was proper.

On recross-examination Coleman was asked if the defendant had ever told him that Abboud, Novak, Buttner, or anyone else was his agent. The witness had started to answer the question when he was interrupted and asked to answer yes or no. When this request was refused, the defendant moved for a mistrial which was overruled.

The manner in which a witness may be examined is within the sound discretion of the court. Jordan v. State, 101 Neb. 430, 163 N.W. 801. The ruling of the trial court in this case was not an abuse of discretion. See 98 C.J.S., Witnesses, § 352, p. 73.

Both Adams and Novak testified at the trial, but Abboud did not testify. By instruction No. 35, the trial court advised the jury that it could not draw any inference from the fact that Abboud had not testified. Similar instructions have been approved where the jury was advised that nothing may be taken against a defendant who had not testified. Murray v. State, 119 Neb. 16, 226 N.W. 793; Lamb v. State, 69 Neb. 212, 95 N.W. 1050.

The words "neglect or refusal to testify," to which the defendant objects, appear in section 29-2011, R.R.S. 1943, which was incorporated verbatim in the instruction. The instruction did not imply that Abboud had a duty to testify, and the instruction could not have prejudiced the defendant in any way. The assignment of error is without merit.

In his motion for new trial the defendant alleged misconduct on the part of a juror for failing to disclose on voir dire examination that she had signed a petition to recall mayor Dworak. The voir dire examination of the jurors is not a part of the bill of exceptions and it is not clear as to how the inquiry was made concerning this circumstance. Apparently, the prospective jurors were asked generally, as a group, if they had been involved in any political campaign for the recall of any officers.

At the hearing on the motion for new trial, the juror testified that no names were mentioned in the question asked on voir dire, that she probably would have forgotten about signing the petition at that time, that she did not form any opinion about the guilt or innocence of the defendant, that she was not acquainted with any of the councilmen, and that the recall was directed only against the mayor.

A motion for new trial for alleged misconduct of a juror is addressed to the sound discretion of the trial court. Sundahl v. State, 154 Neb. 550, 48 N.W. 2d 689. As a general rule a verdict will not be set aside for reasons that would be sufficient to disqualify a

juror on a challenge for cause, which existed before the juror was sworn but which was unknown to the accused until after the verdict, unless it appears from the whole case that the substantial rights of the accused were materially affected by the fact that the juror served in the case.

The record in this case does not show an abuse of discretion in the ruling on the motion for new trial.

The judgment of the district court is affirmed.

AFFIRMED.

State v. Abboud, 181 Neb. 85-90

Heard before WHITE, C. J., SPENCER, BOSLAUGH, BROWER, and MCCOWN, JJ., and MANASIL and HASTINGS, District Judges.

BOSLAUGH, J.

The defendant, Ronald J. Abboud, was convicted on three counts of aiding and abetting Ernest A. Adams and Stephen T. Novak in soliciting, proposing, or agreeing to receive bribes in violation of section 28-708, R.R.S. 1943. His motion for new trial was overruled and he has appealed

The case arose out of an application to rezone a tract of land at Eighty-first Street and Farnam Drive in Omaha, Nebraska. Adams and Novak were members of the city council who voted for the rezoning. The

State's theory of the case was that the defendant, in conspiracy with others, aided and abetted Adams and Novak in soliciting, proposing, and agreeing to receive bribes for favorable votes on the rezoning application.

The defendant was charged by indictment. Upon the motion of the State, the indictment against the defendant was consolidated for trial with indictments against Adams and Novak. Although each defendant has appealed separately, a number of the assignments of error are common to all three appeals.

We have this day affirmed the conviction of Adams. See State v. Adams, *ante* p. 75, —— N.W. 2d ——. This opinion will be limited to a discussion of the assignments of error which are not disposed of by the opinion in State v. Adams, *supra.*

The procedure for the selection of a grand jury in this state is prescribed by statute. The jury commissioner is directed to select at random the names of 80 persons from the jury list. § 25-1629, R.R.S. 1943. Forty names are then drawn from a box or wheel containing the 80 names. From this list of 40 names the jury commissioner, the presiding judge, and one other person designated by the presiding judge select 16 persons as grand jurors and 3 persons as alternates. § 25-1633, R.R.S. 1943.

The grand jury in this case was not selected from the first 80 names selected at random by the jury commissioner. The trial court found that an insufficient number of qualified jurors was contained on the first

list and directed that a second, and later a third, list be drawn. The defendant contends this was illegal and that the proceedings of the grand jury were void.

The defendant argues that the jury must be selected from the first 80 names because there is no specific provision authorizing a second panel if the first proves to be insufficient. We think that the more reasonable interpretation of the statute is that which was adopted by the district court. Where the first panel proves to be insufficient, the proper procedure is to select additional panels until a sufficient number of qualified jurors has been obtained.

The defendant further complains that an unlawful voir dire examination of prospective jurors was conducted and jurors were improperly disqualified or excused. The statute authorizes the jury selection board to mail an examination form or questionnaire to prospective jurors and to examine them under oath as to their qualifications. §§ 25-1633.02 and 25-1633.03, R.R.S. 1943. The statute further permits the district court, in its sound discretion, to excuse for cause any grand juror who has been summoned. § 25-1601, R.R.S. 1943.

In Krause v. State, 88 Neb. 473, 129 N.W. 1020, Ann. Cas. 1912B 736, this court held that a substantial compliance with the statute in the selection of a grand jury was sufficient, and that the only objection which could be taken by plea in abatement would be to show the jurors lacked positive qualifications demanded by law. This court further stated: "The legislature

having provided the grounds upon which and the procedure by which an indictment may be attacked, none others should be recognized." The assignment of error is without merit.

The defendant further complains that the indictment is invalid because he was summoned to appear as a witness before the grand jury. In O'Bryan v. State, 111 Neb. 733, 197 N.W. 609, the defendant was subpoenaed as a witness and testified before the grand jury. This court held that the failure to claim the constitutional right against self-incrimination waived the privilege.

In this case in ruling upon the motion to quash, the trial court noted that the defendant had been cautioned as to his privilege against self-incrimination, had claimed the privilege, and the privilege was sustained by the trial court. The assignment of error is without merit.

The defendant further complains that the oath administered to the witnesses before the grand jury required them to keep their testimony secret. The statute, section 29-1410, R.R.S. 1943, does not prescribe the form of the oath other than that the witness shall testify truly of such matters and things as may be lawfully inquired of before the jury. An oath of secrecy is required in some jurisdictions and is in keeping with the secrecy which is traditional in grand jury proceedings. See, 24 Am. Jur. Grand Jury, § 47, 1966 Cum. Supp., p. 153; 4 Wharton's Criminal Law and Procedure, § 1719, p. 487. The oath administered in this case was not improper.

The indictment against the defendant originally contained seven counts. A demurrer was sustained as to the first four counts. The defendant contends that the demurrer should have been sustained as to the last three counts because the defendant cannot be convicted of aiding and abetting unless the act of the principal is a crime.

The principal referred to in each of the last three counts was a member of the city council, a "public officer," and the crime charged was soliciting, proposing, and agreeing to receive a bribe. The act of the principal alleged in each count was a crime under section 28-708, R.R.S. 1943, and was sufficient to support a charge of aiding and abetting.

The principal witness for the State was John B. Coleman who wanted the property rezoned so that he could construct an apartment development on the site. Coleman testified at length concerning conversations with the defendant and other members of the conspiracy. A number of these conversations which took place in Coleman's hotel room were recorded upon a tape recorder.

The defendant moved to suppress the recordings and later objected to their admission in evidence. The motion to suppress was overruled and the recordings were received in evidence over objections and heard by the jury. The defendant contends that the tape recordings were obtained by "electronic eavesdropping" and were an invasion of the defendant's right of privacy. The contention is without merit.

The conversations which were recorded took place in a hotel room rented by Coleman. The conversations were between Coleman and the defendant and other members of the conspiracy. Coleman testified at length concerning these conversations, and the recordings merely corroborated his testimony as any other witness present might have done. The motion to suppress and the objections to the recordings were properly overruled. See, Lopez v. United States, 373 U.S. 427, 83 S. Ct. 1381, 10 L. Ed. 2d 462; On Lee v. United States, 343 U.S. 747, 72 S. Ct. 967, 96 L. Ed. 1270.

The defendant claimed the right to peremptorily challenge six jurors but the trial court allowed him only three peremptory challenges. Section 29-2005, R.R.S. 1943, provides for three peremptory challenges where the offense is punishable by imprisonment for 18 months or less and for six peremptory challenges where the punishment may exceed 18 months imprisonment but is less than life. The defendant was charged in three counts with violating section 28-708, R.R.S. 1943, which is punishable by imprisonment for 1 year.

A defendant is not entitled to additional peremptory challenges because the indictment charges separate offenses in separate counts. See 50 C.J.S., Juries, § 281, p. 1077. The maximum punishment under any one count was imprisonment for 1 year. The ruling of the trial court was correct.

Instruction No. 4, relating to aiders and abettors, contained this sentence: "In this connection you are instructed that the State has offered evidence tending

to establish the guilt of the defendant Ronald J. Aboud by reason of his being an abettor and accomplice." The defendant complains that the instruction constituted a comment on the evidence and invaded the province of the jury.

The counts of the indictment which were submitted to the jury all charged the defendant as an aider and abettor. The other instructions advised the jury that it might find the defendant guilty on all three counts. The effect of all of the instructions was to tell the jury that there was evidence tending to establish the defendant's guilt, but that it was for the jury to decide whether it established his guilt. Under the circumstances of this case, the particular instruction given was not prejudicial to the defendant when considered together with the other instructions.

The judgment of the district court is affirmed.

AFFIRMED.

State v. Novak, 181 Neb. 90-96

Heard before WHITE, C.J., SPENCER, BOSLAUGH, BROWER, and MCCOWN, JJ., and MANASIL and HASTINGS, District Judges.

BOSLAUGH, J.

The defendant, Stephen T. Novak, was convicted of soliciting, proposing, or agreeing to receive a bribe in violation of section 28-708, R.R.S. 1943. His motion for new trial was overruled and he has appealed.

The case arose out of an application to rezone a tract of land at Eighty-first Street and Farnam Drive in Omaha, Nebraska. The defendant was a member of the city council and voted for the rezoning. The State's theory of the case is that the defendant, in conspiracy with others, solicited, proposed, and agreed to receive a bribe in the amount of $10,000 for a favorable vote on the rezoning application.

The defendant was charged by indictment. Upon the motion of the State, the indictment against the defendant was consolidated for trial with indictments against Ernest A. Adams and Ronald J. Abboud. Although each defendant has appealed separately, a number of the assignments of error are common to all three appeals.

We have this day affirmed the convictions of Adams and Abboud. See, State v. Adams, *ante* p. 75, —— N.W. 2d ——; State v. Abboud, *ante* p. 84, —— N.W. 2d ——. This opinion will be limited to a discussion of the assignments of error which are not disposed of by the opinions in State v. Adams, *supra*, and State v. Abboud, *supra*.

The defendant's motion to quash the indictment was overuled and that ruling is assigned as error. The defendant complains that the indictment stated three charges in the alternative in a single count.

The defendant was charged in the language of the statute with soliciting, proposing, or agreeing to receive a bribe. Where a statutory crime may be com-

mitted by any of several methods, an indictment may charge in a single count that it was committed by any or all of the enumerated methods if they are not inconsistent with or repugnant to each other. Hoffman v. State, 164 Neb. 679, 83 N.W. 2d 357; Winkelmann v. State, 114 Neb. 1, 205 N.W. 565. There was no prejudice to the substantial rights of the defendant upon the merits. § 29-1501, R.R.S. 1943; Brown v. State, 107 Neb. 120, 185 N.W. 344; Smith v. State, 109 Neb. 579, 191 N.W. 687.

The defendant, over objection, was required to appear before the grand jury as a witness and was denied the right to have his counsel present in the grand jury room. The defendant contends that the denial of his request for the presence of his counsel in the grand jury room invalidates the indictment.

As we understand the record, there is no contention that the defendant was compelled to answer any questions other than as to his name and address; that he was advised as to his right to counsel, his privilege against self-incrimination, and that he would be permitted to leave the grand jury room to consult with counsel; and that defendant claimed his privilege against self-incrimination, was permitted to leave the jury room, and that his privilege was sustained by the trial court. Under the circumstances of this case the denial of the right to have his counsel present in the grand jury room did not result in any prejudice to a substantial right of the defendant. The assignment of error is without merit.

The defendant filed a discovery motion which requested permission to inspect and copy transcripts of recordings of the conversations between John B. Coleman, a witness for the State, and the defendant and others, and "all other evidence in the possession of the prosecution relevant to exonerate the defendant or to establish any defense available to the defendant." This motion was overruled, but the trial court later ordered that the defendant be furnished with a transcript of the tape recordings. The record further indicates that the defendant's counsel was afforded an opportunity to hear the recordings in their entirety before they were received in evidence.

The trial court is invested with a broad discretion in ruling upon a discovery motion in a criminal case. Cramer v. State, 145 Neb. 88, 15 N.W. 2d 323. The record does not show any abuse of that discretion by the trial court in this case.

Recordings of conversations between Coleman and the defendant, and others, were received in evidence over the objections of the defendant. The defendant complains that the recordings should not have been received because there was no sufficient identification of the voices which had been recorded and were heard by the jury.

Coleman, who was the principal witness for the State, testified at length concerning the conversations which had been recorded. There were other witnesses who testified as to who was present at the time the conversations took place. There was sufficient identifi-

cation of the voices to permit the recordings to be received in evidence and be heard by the jury.

The rezoning application involved in this case did not receive a favorable vote upon its first consideration by the planning board of the city of Omaha. At the suggestion of Carville R. Buttner, a member of the planning board, the defendant and Buttner made a trip to Houston, Texas, at Coleman's expense to inspect similar developments there.

The rezoning application was approved by the planning board on August 3, 1964. Coleman testified that on that evening he talked with Buttner and was told that he would have to pay $2,000 to the defendant, several hundred dollars to Adams, and give the construction contract to Abboud to get the rezoning approved by the city council.

On the following morning, Coleman had a conversation with Buttner, Abboud, and the defendant. This conversation was similar to that which had occurred on the preceding evening in which Coleman had been advised that he would have to pay Novak and Adams and give the construction contract to Abboud to obtain council approval of the rezoning.

A third, similar conversation took place with Buttner on August 13, 1964. A fourth, similar conversation took place with Abboud the following morning. According to Abboud, Coleman would have to pay $2,000 to Novak and $5,000 to Adams.

Coleman testified that he delivered a check, identified as exhibit 3, for $2,000 to the defendant on August 27, 1964. This check was later returned to Coleman by Abboud uncashed. On September 7, 1964, Coleman had a conversation with the defendant in which the defendant said that he had given the check to Abboud because the defendant felt that it was too dangerous to have a check made out to him directly.

On September 8, 1964, Coleman had a conversation with the defendant in which the defendant stated that Adams would want his payment the night after the rezoning was approved. The city council held a public hearing on the rezoning application that evening. Late in the evening Coleman had a conversation with Abboud in which Abboud said that the payment to the defendant would be $10,000.

On September 10, 1964, Coleman had a conversation with Abboud and the defendant in which Coleman was directed to issue a check for $2,000 to Abboud for the defendant. Coleman then delivered a check, identified as exhibit 1, in the amount of $2,000 to Abboud. Exhibit 43 is a photocopy of a check in the amount of $2,000 payable to the defendant and signed by Abboud which was dated and cashed on September 11, 1964.

On September 23, 1964, Coleman had a conversation with Abboud regarding the $8,000 balance to be paid Novak. Coleman at that time delivered a check in the amount of $8,000 to Abboud.

The evidence, although in part circumstantial, was sufficient for the jury to find that a conspiracy existed; that the defendant was a member of the conspiracy; and that he was guilty of soliciting, proposing, and agreeing to receive a bribe in the amount of $10,000 from Coleman.

The defendant contends that the trial court erred in admitting in evidence exhibits 1, 2, 3, 4, 43, and 44. Exhibits 1, 3, and 43 relate to the defendant in this case. Exhibits 2, 4, and 44 relate to Adams.

Exhibit 44 is a photocopy of the check for $5,000 from Abboud to Adams which was later returned unpaid as drawn on uncollected funds. Exhibit 8, referred to in State v. Adams, *ante* p. 75, —— N.W. 2d ——, is a photocopy of the same check after it had been returned to Adams with an advise of charge slip attached to it. Exhibit 2 is the check for $5,000 which Coleman gave to Abboud on September 16, 1964, to reimburse Abboud for the payment Abboud had made to Adams. Exhibit 4 is a photocopy of exhibit 2 which was made before Coleman delivered exhibit 2 to Abboud. A notation, "Earnest Deposit on 72 Maple," which appears on exhibit 2, was placed on the exhibit after it had been delivered to Abboud by Coleman and does not appear on exhibit 4.

Exhibit 3 is the check for $2,000 from Coleman to "Steve Novak Realty Company" which was delivered to the defendant by Coleman on August 27, 1964, and later returned uncashed by Abboud. Exhibit 1 is the check for $2,000 from Coleman to "Abboud Investment

Co." handed to Abboud by Coleman on September 10, 1964. Exhibit 43 is a photocopy of the check for $2,000 from "Abboud Investment Company, Inc." to the defendant which was dated and cashed September 11, 1964.

The defendant argues that the checks were not admissible because they were evidence of lawful acts. The evidence of the State, which the jury believed, established that the acts evidenced by the checks were unlawful acts.

The defendant further argues that there was no proof that the banks or the accounts on which the checks were drawn existed, and that some of the payees and drawers were not identified. The defendant was charged with soliciting, proposing, or agreeing to receive a bribe. The exhibits were clearly admissible as evidence of the defendant's efforts to obtain a bribe even though they also tended to prove that the bribe was actually received.

So far as the best evidence rule is concerned, the original check, of which exhibits 8 and 44 are photocopies, was produced by Adams and appears as exhibit 54. As to exhibit 43, the testimony shows that the photocopy was made after the checks had been presented and paid by the Omaha National Bank, and that in the normal course of business the original would be returned to the maker Abboud. The objections to the exhibits were properly overruled.

The defendant complains that the trial court failed to instruct the jury concerning the crime with which the defendant was charged, and that instruction No. 13 was erroneous.

Instruction No. 2 advised the jury concerning section 28-708, R.R.S. 1943, as applicable in this case. Instruction No. 3 advised the jury that a city councilman is a public officer. Instruction No. 6 summarized the charge against the defendant. Instruction No. 15 advised the jury as to the material elements of the charge against the defendant. We think the instructions given concerning the crime charged were adequate.

Instruction No. 13 advised the jury that it must consider the guilt of each defendant separately and that it must acquit Abboud if verdicts of not guilty were returned as to Adams and Novak. We find no error in the instruction.

The judgment of the district court is affirmed.

AFFIRMED.

APPENDIX B

Following are examples of articles appearing in the Omaha World Herald during the periods involved.

The first article is "The John Coleman Story" of September 25, 1964. Next, the indictment story of December 16, 1964. The remaining articles are examples of the daily coverage supplied by the World Herald during petitioner's trial, which lasted from October 25, 1965, through November 16, 1965.

Rain, Cooler
By the United States Weather Bureau
Eastern Nebraska—Chance of showers tonight. Light showers Saturday. Cooler Saturday. Lows tonight, 50's to 60's. Highs Saturday, 60's to 80's.
News Summary, Page 2.

Evening World-Herald

Nebraska Final Edition
Nebraska's Only Full Wirephoto Service. Seven News Services Cover the World.

OUR 80TH YEAR—No. 34. Entered as second-class matter at the Postoffice at Omaha, Nebraska, under Act of March 3, 1879. OMAHA, NEBRASKA, FRIDAY, SEPTEMBER 23, 1966—44 PAGES. Published each weekday morning, Sunday morning and Monday afternoon at Omaha, Nebraska. TEN CENTS

Transport Costs Not Tax Basis

3 Tire Firms So Tell Carpenter

By Don Shasteen
World-Herald Lincoln Bureau, 201 Federal Office Building.

Three major tire companies told State Senator Terry Carpenter today that they do not include transportation costs in the value of the products they report for taxation each January 1.

The firms also said they use a unit-cost figure which they apply equally to all tires regardless of types and grades.

They said the actual production cost is highly competitive and thus guarded as a secret by most companies.

Testimony by representatives of the United States Rubber Company and the Firestone Tire and Rubber Company marked the fourth day of hearings conducted by the Scottsbluff legislator as chairman of the Legislative Council Tax Study Committee's property tax subcommittee.

Submits Inventory

The Gates Rubber Company submitted detailed inventory and cost records to the subcommittee in lieu of sending a representative to testify.

Only Douglas County stocks of merchandise were involved.

Mr. Carpenter said the information developed by the committee indicates Douglas County Assessor Joe Stolinski was not checking returns of tire companies as closely as he should.

He said the Gates Company deducted approximately 50 per cent of the merchandise it actually had on hand in the county on January 1.

This was done on the basis that the merchandise was stored in a company warehouse for ultimate shipment to points in other states.

Not Bonded

Mr. Carpenter said the company said Nebraska is an "open port" under the new Warehouse Law. He said the law actually exempts only property stored in bonded warehouses owned by other persons and held for shipment to other states.

The Gates firm's products were stored in its own warehouse, which was not bonded, Mr. Carpenter said.

The chairman emphasized that he is not implying or suggesting the firm did anything deliberately to evade or avoid taxation. He praised the company for the detailed information it submitted.

He said other companies should check into the possibility of using the Warehouse Law on the same basis, to determine whether it would be legal for them to operate the same way.

Urges a Check

Yale Holland, Omaha attorney representing Firestone, suggested a special formula be established by law for valuing business personal property for taxation.

He said the six-factor formula now written into law appears to be designed for real estate.

Mr. Carpenter said it's "impossible" to apply the present formula to personal property. He asked whether a special formula can be devised without interfering with the uniformity requirement of the State Constitution.

Mr. Holland said he believes the uniformity requirement can be met "if you put down one formula and apply it to every one on the same basis."

Mr. Carpenter suggested that the Omaha attorney check into the matter further and "see if something can be accomplished."

—AP Wirephoto.
Freund . . . With rebels.

Rebel Threat Still Remains

Vietnamese Continue to Hold Hostages

Ban Me Thuot, Viet Nam (AP)—War still threatened today between Vietnamese troops and rebel mountain tribesmen despite a Government announcement that tribal "aspirations" in Central Viet Nam had been satisfied.

A spokesman for Premier Nguyen Khanh said the revolt is still serious.

Col. John F. Freund of New York and five other Americans who have been training the Montagnards as guerrilla fighters against the Communists remained with the rebels in four camps.

There was no immediate prospect that Colonel Freund will leave isolated Buon Sa Par Camp, where he has filled the double role of hostage and chief negotiator.

United States officials believe the Montagnards (mountain people) could easily be persuaded to release the Americans. But they felt this would break the only link with the rebels.

About four thousand Government troops and 12 field guns guarded Ban Me Thuot against the mountaineers, who killed perhaps 50 lowland Vietnamese officers and soldiers at their camps last week end.

The rebellious Montagnards maintained barricades around their camps. They allowed only American helicopters and planes to land and admitted only Americans they knew and trusted.

Troops Guard Khanh Amid Coup Rumors

Saigon (UPI) — Rumors of another impending military revolt led Vietnamese commanders to reshuffle their troops into defensive positions around Saigon today.

A company of Vietnamese paratroopers camped at the offices of Prime Minister Maj. Gen. Nguyen Khanh. Aides said they had been stationed there because of the spreading coup rumors.

Showers Again May Cross Area

Widely scattered showers, mostly light and brief, are expected in Northern Nebraska and possibly Northwest Iowa tonight, the Weather Bureau said.

More showers are due in portions of Eastern Nebraska and Western Iowa Saturday.

Cooler air will enter Northwest Nebraska tonight. Nebraska and Northwest Iowa will be cooler Saturday, the bureau said.

The five-day forecast calls for temperatures four to eight degrees below normal in both states with only light rain.

FAA Draws Airport Plans in Nebraska

69 Towns Included in 5-Year Program

By Darwin Olofson
World-Herald Washington Bureau, Suite 1207 National Press Building.

The Federal Aviation Agency unveiled Friday its blueprint for a $14,100,000 airport development program in Nebraska over the next five years.

Sixty-nine towns and cities would be affected by the recommended development.

The recommendations include new airports for 15 communities.

The airport construction and improvements for Nebraska are part of a new FAA five-year national airport plan covering 3,826 civil landing facilities and with a total estimated cost of $1,200,000,000.

Inclusion of an airport in that list does not mean it automatically qualifies for a Federal-aid airport. No airport can be considered for such a grant, however, unless it is included.

No Individual Estimates

For Eppley Airfield at Omaha the recommended development includes land acquisition, site preparation, the extension of a runway and taxiway, the construction of a runway, taxiways and apron, the widening of taxiways, improved lighting, a fire and crash building and miscellaneous construction.

For the Lincoln Municipal Airport the plan recommends land acquisition, site preparation, the extension of a runway, taxiway and apron, a surface runway, the paving of taxiways, improved lighting and miscellaneous construction.

No cost estimates were given for individual airports.

The 15 Nebraska cities for which new airports were recommended are Albion, Alma, Aurora, Benkelman, Crawford, Lodgepole, Millard, Mullen, Nebraska City, Plattsmouth, Red Cloud, Seward, South Sioux City, Spalding and Sutherland.

Improvement Projects

Improvements of various kinds were recommended for airports at the following towns and cities:

Ainsworth, Alliance, Arapahoe, Arthur, Atkinson, Auburn, Bassett, Blair, Broken Bow, Brunsing, Burwell, Cambridge, Central City, Chadron, Columbus, Conad, David City, Fairbury, Falls City, Fremont, Gothenburg, Grand Island, Grant, Hastings, Hay Springs, Hebron.

Also Hemingford, Holdrege, Humboldt, Hyannis, Imperial, Kearney, Kimball, Lexington, McCook, Minden, Mitchell, Nelight, Norfolk, North Platte, Ogallala, O'Neill, Ord, Oshkosh, Potter, Scottsbluff, Sidney, Thedford, Valentine, Wahoo, Wayne and Weeping Water.

Through 1969

The airport plan covers the current fiscal year, which began July 1, and extends through fiscal 1969.

The total cost of the recommended developments in Nebraska, including Federal and local contributions, was estimated at $10,932,000 for the current year and next year.

The cost estimate for the fiscal years 1967 through 1969 is $3,170,000.

Traffic Fatalities

Story on Page 42.

Deaths—Sept. 25, 1964	1965	1963
In Omaha	19	34
In Nebraska	360	363
In Southwest Iowa	64	44
In All Iowa	573	471

British Campaign Formally Begins

London (UPI) — Britain's campaign for the October 15 Parliamentary election formally opened Friday in ceremonies inherited from the Middle Ages.

Queen Elizabeth flew down from Balmoral Castle in Scotland to sign a royal proclamation dissolving Parliament and ordering an election for a new one.

UAW Strikes G. M. Plants

No Contract Reached as Deadline Passes

By the Associated Press.

A nationwide strike against General Motors Corporation flared today when the United Auto Workers and the company failed to agree on a new contract by a union imposed 10 a. m. (EST) deadline.

The union previously negotiated three-year pacts at Chrysler Corporation and Ford Motor Company, final agreement coming only 55 minutes ahead of deadlines at each.

The union took General Motors out of 1965 model production but announced its plants which build and sell parts in Chrysler and Ford would not be struck.

Disclosure that the strike was official didn't come until after workers already had started walking out at Cleveland, O., Framingham, Mass., Kansas City and elsewhere.

UAW President Walter P. Reuther announced in Detroit that it was with "a great sense of sadness and disappointment" that he announced failure to reach agreement with General Motors.

The UAW estimated its strike of G.M. would idle 260 thousand of its 354 thousand production workers.

Unresolved issues at the start of a 24-hour marathon bargaining session included grievance procedures, union representation in the plants, disciplining of workers and working conditions.

Market Creeps Up; Some Loss

Thursday close, Page 35.

New York (AP)—The stock market was a little higher early today despite scattered losses. Trading was moderately active.

General Motors lost a fraction in advance of news about a possible strike. Du Pont, which still has big holdings of G.M. stock, sank more than two.

Ford was steady and Chrysler recouped a fraction.

Airlines, steels, rubbers, electrical equipments, tobaccos, rails, electronics and nonferrous metals edged higher.

75 NFO Members Gather at Columbus

Columbus, Neb. (AP)—A crowd of 75 to one hundred National Farmers Organization members and their wives started gathering at the Columbus sales pavilion Friday urging truckers to turn back from the weekly hog auction.

Sheriff Herman Christensen and his deputies were on hand but there was no effort to hamper the entrance of the trucks or to prevent them from being unloaded.

An observer said two pickup trucks and one larger truck turned back, but personnel at the sales pavilion said the auction would go ahead.

This Week End—

In the Midlands

List of events on Page 42.

The World's Championship Rodeo at Ak-Sar-Ben and "Dama Lankeer" at the Omaha Playhouse will entertain Midlanders for another week end. Meanwhile the Omaha Mustangs will try to upset the plans of the Quad-City Raiders at Rosenblatt Stadium.

Elsewhere, there will be the Nebraska Gun and Cartridge Show at North Platte, the Kane County Karnival at Plattsmouth, Neb., auto racing at Greenwood, Ia., and a horseshoe tournament in Council Bluffs.

Temperatures

Thursday		Friday Midnight to 8 a. m.
Noon	67	68
1 p. m.	68	68
2 p. m.	68	68
3 p. m.	68	68
4 p. m.	68	68
5 p. m.	68	68
6 p. m.	68	68
7 p. m.	68	68
8 p. m.	68	68
9 p. m.	68	68
10 p. m.	68	68
11 p. m.	68	68
Midnight	68	68
1 a. m.	68	68
2 a. m.	68	68
3 a. m.	68	68
4 a. m.	68	68
5 a. m.	68	68
6 a. m.	68	68
7 a. m.	68	68
8 a. m.	68	68

The John Coleman Story—

Investor Says Mayor, Four Others Involved in Zoning Case Deal

To Our Readers:

We are reporting to our readers today an account of some of the happenings that befell a Chicago builder when he undertook to construct a high class townhouse project in Omaha.

The name of the builder is John B. Coleman. A story about him, his life and his background, appears elsewhere on this page. An explanation of why and how he made contact with The World-Herald, and an account of his experiences in Omaha, begins on Page 14.

The World-Herald has investigated this narrative with every means and resource at its command.

We have concluded that Mr. Coleman acted from honorable motives throughout. We have concluded that he did what he did, and is revealing what he here reveals, because he considers it his duty as a citizen to do so.

After its painstaking investigation, The World-Herald believes that the narrative of Mr. Coleman's experiences in Omaha is true in every essential detail. We are publishing it herewith because we believe we have a public duty to do so. We believe that the people of Omaha, and of all America, are entitled to know the truth about the way in which their affairs are handled by their public officials.

Some of the more squalid details, which are not vital to this story, have been omitted for reasons of propriety.

With those few preliminary words, we invite our readers' attention to the John Coleman Story. We hope they will read it in its entirety.

John Bennett Coleman

Coleman Principal Investor in Developing Real Estate

81st, Farnam Venture His First in Omaha

John Bennett Coleman, the Chicago, Ill., developer who has been trying to build a cluster of town houses at Eighty-first Street and Farnam Drive, established his business in 1961.

He is a principal investor in industrial and other real estate holdings, arranges financing for industrial companies with institutional lenders and deals in industrial mergers and acquisitions.

The West Omaha project would be his first in Omaha and his first in association with Jay Carroll and Associates, Houston, Tex., architectural firm.

Mr. Coleman was born October 16, 1935, in Boston, Mass. His father, the late Alfred M. Coleman, headed a building and plumbing supplies company.

John Coleman attended preparatory school at Lawrence Academy, Groton, Mass. He was graduated in 1957 from Rutgers University, New Brunswick, N. J.

He entered the Harvard University Graduate School of Business but left before the end of his second semester to accept an offer to be department manager for an investment banking house with offices in Boston and New York. He also took courses at Boston University Graduate School of Business.

Mr. Coleman went to Chicago late in 1961 as a consultant in corporate financing to an investment firm.

He married Margo Lederer of Chicago the next year. Her parents are Jules Lederer, president of Budget Rent-A-Car Corporation of America, and Esther Lederer, who writes a syndicated column under the name Ann Landers. John and Margo Coleman have a 1½ year old daughter, Abra.

He belongs to the Standard Club of Chicago. He is a director of Camp Henry Horner for underprivileged children. Last February he was appointed a consultant to the Small Business Administration.

ELMER BROWN, 6418 Northwest—"I received 15 or 20 calls in response to my World-Herald 'Home Furnishings' Want Ad."
—Adv.

$1,000,000 Project to Build Apartments Discussed by Group

Steve Novak, Adams, Buttner in Plan Steered by Ronald J. Abboud

The John Coleman Story starts on Page 14.

A Chicago investment man who came to Omaha to build a one-million-dollar apartment project at Eighty-first Street and Farnam Drive has revealed that certain city officials arranged to accept payments from him in connection with the rezoning of the land.

John B. Coleman stated, and a six-week World-Herald investigation confirmed, that:

—Mayor James J. Dworak agreed to a 25-thousand-dollar "campaign contribution" and said he would not veto the rezoning action.

—A five-thousand-dollar check was drawn by Mr. Coleman payable to a third party, who wrote a check for the same amount to City Councilman Ernest A. Adams' real estate trust account.

—A two-thousand-dollar check was written by Mr. Coleman to a third party, who in turn wrote a check for two thousand dollars to Councilman Stephen T. Novak.

—Planning Board Member Carville R. (Barney) Buttner received a check from Mr. Coleman for $177.16 to pay for a Kansas City interlude on a Houston, Tex., trip in July. Mr. Buttner also was to receive five thousand to 10 thousand dollars out of the contractor's profit on Mr. Coleman's project.

—Omaha real estate man Ronald J. Abboud was the third party, personally and through companies which he heads, in the payments to Councilmen Adams and Novak. He was to receive the building contract and a profit of about 10 per cent —100 thousand dollars—on the Coleman project. Mr. Coleman was to see that Mr. Abboud got the contract on a "low bid."

Mr. Coleman made this statement Friday:

"I came to Omaha in August, 1963, to build quality townhouse apartment units which have been well received in other communities.

"As my efforts to obtain the necessary rezoning proceeded, I began to get feelers for payoffs from local government officials. I cannot and will not do business with grafters. With the advice of responsible friends in Omaha I decided to stay and expose this corruption."

* * *

It Will 'Stand on Its Merits'

When asked about the status of his project, Mr. Coleman said:

"My project will stand on its merits. I will not rely on the zoning approval which my project has received. I will seek proper municipal approval of my project at the appropriate time."

The story of the payments was revealed by the persons involved, in conversations with Mr. Coleman in his Omaha hotel room.

The "campaign contribution" to Mayor Dworak was to be paid by Mr. Coleman in installments through a corporation. The entire amount was to be paid before next April.

The City Council approved the rezoning September 15. The check for the Adams payment was written by Mr. Coleman September 16. He made it payable to the Guarantee Realty Company, one of Mr. Abboud's businesses. Mr. Abboud wrote a check the same day for the same amount, making it payable to the Ernest Adams Real Estate Trust Account. This check was deposited. Mr. Abboud drew this check on the Abboud Investment Company.

The Novak payment also was channeled through Mr. Abboud. Mr. Coleman wrote a two-thousand-dollar check September 10 to Abboud Investment. The next day Mr. Abboud signed a check for two thousand dollars to Mr. Novak.

* * *

Side Trip to Kansas City

Messrs Novak and Buttner flew to Houston July 23 to inspect projects similar to Mr. Coleman's Omaha proposal.

After a two-day stay in that city they returned to Omaha, stopping for one night at Kansas City, Mo. Before leaving Houston they told Mr. Coleman's architect that Mr. Buttner would change his "no" vote to "yes" the next time the Coleman proposal came before the Planning Board.

In a letter postmarked July 30, Mr. Buttner wrote to Mr. Coleman in Chicago and told him Mr. Novak would be his "lead into the Council" on the rezoning application.

Enclosed with the letter from Mr. Buttner was an itemized statement for the $177.16 spent in Kansas City. Mr. Coleman wrote a check to Mr. Buttner on August 13 for that amount.

There followed in August and September a series of meetings in Mr. Coleman's hotel room and elsewhere in which the payments were set up.

On August 13 Mr. Buttner described to Mr. Coleman the way Mr. Novak was to be handled.

The next day Mr. Abboud met with Mr. Coleman at the hotel. He told Mr. Coleman he had Councilman Adams's vote.

"What's involved with him?" Mr. Coleman asked.

* * *

'I Told Him He Was Nuts'

"We started at 10 thousand and I told him he was nuts," Mr. Abboud replied. "I said he won't even consider it . . . it is somewhere between two and five when we finish with him."

Mr. Abboud discussed the arrangements further at a September 8 session with Mr. Coleman.

"Steve is 10 . . . Barney's 10 . . . I'm taking care of

Turn to Page 14, Column 4.

Why Teen Marriages Increase In—
Your Sunday World-Herald

Teen Marriages. Why are they increasing? What are their chances of success? Magazine of the Midlands story provides some answers.

* * *

Soap Operas. *Sudsy dramatics are billowing on TV, and chances are that more serial-type programs will follow. TV Magazine.*

* * *

Something Old. Spacious Hastings, Neb., home offers family comfort while providing an impressive showcase for antiques. Midwest Home Section.

* * *

Sharp Shooter: *Lieut. Col. Elbert S. Throckmorton, a man who deals in missiles, is on-target when it comes to trapshooting, too. Blue Streak Sports Section.*

* * *

Royal Design. Some of the gowns to be worn in this year's Ak-Sar-Ben Coronation will have an authentic royal flavor. Women's News Section.

Beauty-filled

Thousands of Omaha women found Thursday was a beauty-filled day as well as a busy one. For an account of two events of beauty see Page 20

* * *

Midnight is the witching hour — sometimes. Midnight is the climax of long waiting in Gasoline Alley today on Page 19

HOUSES, apartments, or duplexes can be rented easily and rapidly by looking in the World-Herald "For Rent" Want Ads.
—Adv.

The John Coleman Story . . . . . It Began in Omaha in 1963

How It All Began

On July 13, John Stanton, then managing editor of the Chicago Daily News, telephoned to the managing editor of The World-Herald to report that a situation had come to his attention that might be of interest to The World-Herald.

Mr. Stanton said that a Chicago financier and real estate developer named John B. Coleman had approached the general manager of the News, William C. Munnecke, to ask his advice about a situation he had encountered in Omaha.

Mr. Munnecke told Mr. Stanton he had been informed by Mr. Coleman that while applying for rezoning for a town house development he had encountered obstacles which led him to believe a "shakedown" might be attempted.

Mr. Stanton told The World-Herald that in Chicago Mr. Coleman has a good reputation. He was assured that The World-Herald would definitely be interested in discussing the situation with Mr. Coleman.

Later in the day Mr. Coleman telephoned The World-Herald from Chicago and was invited to come to The World-Herald. He did so on July 15, along with his attorney and adviser, Ronald W. Hunter of Omaha, and his architect, Jay Carroll, Houston, Tex.

After Mr. Coleman related events that had occurred in relation to the building project, The World-Herald decided to make a thorough investigaton.

First Steps

1963-64

John B. Coleman, Chicago financier and real estate developer, said that he first became interested in building a new quality town house development in Omaha in August of 1963 when he was advised by representatives of a Midwest bank that Omaha would be a good location for this type of project.

It was about six months later, in January of 1964, that Mr. Coleman obtained an option for 6½ acres at Eighty-first Street and Farnam Drive.

Jay Carroll, Houston, Tex., architect for Mr. Coleman, then made detailed plans. This took several weeks, with Ronald W. Hunter, Mr. Coleman's attorney and adviser in this matter, contacting representatives of the Chamber of Commerce and the Omaha Real Estate Board to explain the new housing concept and to relate how it had been received in other major cities.

At this time, Mr. Coleman said, he was of the opinion that the project was being favorably received by city officials. He based his feelings in part, he said, on a meeting of the Planning Board on June 10 at which it was requested that he provide detailed additional information. Returning to Chicago, Mr. Coleman had comprehensive brochures made up with photographs, specifications and drawings.

These were distributed to members of the City Planning Board by Mr. Hunter on July 3.

Mr. Coleman said that on July 8 the Planning Board held a meeting and the motion to rezone the sector in question from first to seventh residential was considered.

Chairman Wallace Hopkins had abstained from voting, explaining that his law firm had a conflict of interest. The motion failed to pass when board member Barney Buttner voted against it.

* * *

To Houston

Later it was decided that Mr. Buttner, at the expense of Mr. Coleman, should make a trip to Houston, Tex., to inspect a similar project which Mr. Coleman had built.

Mr. Coleman asked Mr. Buttner to leave the next day, July 16, but Mr. Buttner said that he could not go because he was giving a party on behalf of Mayor Dworak for the press.

Mr. Buttner, Mr. Coleman said, later told him that he would like to take Councilman Steve Novak with him and that they could leave on the next Thursday, July 23.

The two men were met at the airport in Houston by Mr. Coleman's architect, Mr. Carroll, and taken to the Continental Inn.

In a written report to Mr. Coleman, Mr. Carroll said that he and two friends, representatives of investment houses in Houston, entertained Mr. Buttner and Mr. Novak, visiting several night clubs. He wrote that Mr. Buttner had danced the twist in one club with one of the Andrews sisters.

Mr. Carroll reported that the next day the two Omahans were driven to the project Mr. Coleman wanted them to see and that another night of entertainment followed.

He said that Mr. Novak made a telephone call to Omaha and said he had made arrangements to have hotel rooms reserved in Kansas City for himself and Mr. Buttner the next night.

* * *

And Kansas City

Mr. Carroll said that Mr. Buttner assured him that he would change his vote in favor of the rezoning and that Mr. Novak would take the lead in securing approval from the City Council.

On the next day, Saturday, July 25, the Omahans flew to Kansas City and went to the Hilton Inn.

A letter, postmarked July 30, and handwritten on the stationery of the Buttner Plumbing Company, was sent to Mr. Coleman at his offices at 39 South LaSalle Street, in Chicago. It was signed "Barney."

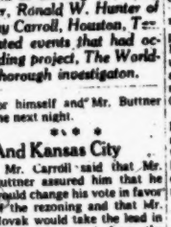
The contents of the letter:

"Had a very exciting time at Houston but the weather was sticky. Enjoyed looking at the new housing developments plus your apartments. Never seen anything quite like it. You can be assured of my reconsidering my former action.

"The Councilman, Steve Novak, would like to meet you when in Omaha. He will be your lead into the Council.

"Everything was fine in Houston except the entertainment so we left one night for Kansas City. I promised the Councilman a good time and we found it in K. C.

"Am enclosing the balance of our expenses except ones



—World-Herald Photo.
James J. Dworak
Mayor

signed by Jay. Hope to be seeing you soon in Omaha."

The expense list:

"Inferno	$23.75
Four Wheels	$ 7.21
Tips Bell Boys	$ 8.00
(3½ days).	
Food enroute	$23.50
Hotel Hilton	$34.70
Cab Fares	$15.00
Entertainment	$65.00
Total	$177.16"

Although Mr. Coleman had not authorized the trip to Kansas City and was unaware the trip had been made he paid the additional expenses by check 2and Mr. Buttner cashed it by sending it through his office account.

* * *

Buttner: Aye

Mr. Coleman and his attorney, Mr. Hunter, appeared at the City Hall for the scheduled Planning Board meeting at 1:45 p. m., Monday, August 3, and learned that the meeting had started early and that the rezoning of the Eighty-first Street and Farnam Drive project had been approved with Mr. Buttner voting in its favor.

Mr. Coleman said Mr. Buttner called him twice at his hotel late that day and told him that Councilman Novak wanted to get in touch with him. He said he told Mr. Buttner to bring Mr. Novak to his room that night.

Mr. Coleman said he left the key to his room at the hotel desk and that when he returned at 9:30 p. m. he found Mr. Buttner in his room. He said that Mr. Buttner told him Mr. Novak had been there and left.

He said that over drinks Mr. Buttner told him that he would bring Ronald Abboud, contractor, to Mr. Coleman's room for breakfast the next day.

Mr. Coleman said that he and Mr. Buttner then went to a couple of night clubs and that at the Bird Cage several patrons sang:

"Here's to Barney, he's true blue."

On the next day, Tuesday, August 4, Mr. Buttner, Councilman Novak and Mr. Abboud, Mr. Coleman said, had breakfast with him in his hotel room.

Mr. Coleman said they discussed methods of getting a favorable vote from the City Council and that it was agreed that Mr. Abboud would get the general contracting and that his fee would be 10 per cent.

On August 12, Wednesday, Mr. Carroll said, he was telephoned by Mr. Buttner and Mr. Buttner advised him to use more pictures when the attempt was made to pass the rezoning through the City Council.

Mr. Carroll said that Mr. Buttner told him that it was going to be a tough fight and that he also asked him about a loan on another project he had discussed with the financial men in Houston.

* * *

August 13

Thursday p. m.

Barney Buttner went to the room of John Coleman and after desultory conversation about a family swimming party and Mr. Buttner's plans to take his family east on vacation, the following took place:

Coleman—"I got a check book here." . . . What else is new? How's business?"

Buttner—"Pretty good except The World-Herald is going to get on me now."

Coleman—"Do you want the check?" (Expenses Mr. Buttner had asked for on the unauthorized Kansas City trip.)

Buttner—"Not right now."

Coleman—"Let me have that check book."

Buttner—"All hell is probably going to break loose when I leave. I don't care. They are getting ready to expose it I guess."

Coleman—"Who told you this?"

Buttner—"Oh, I've got some friends, other —— and other, uh . . . down at City Hall. They've been taking pictures of my truck."

Coleman—"I don't like politics. You know, on this kind of a basis."

Buttner—"I don't either. I, uh, don't consider it really politics on the Planning Board but they want to make it this way, see, because he appointed us, see."

Coleman—"How is Alden (Aust) stabbing you in the back?"

Buttner—"Well."

Coleman—"I'm surprised."

Buttner—"Here's the thing. I, myself, am for anything that's good for a town, make advances, build it basically. I'm real liberal as a whole. You got an area, a hundred by two hundred. Some little guy wants it zoned commercial to build something on it. I say, —— let it go if he wants to build a barber shop, drive-in, let him build it . . . One big shopping center. Well, this was a whole area, that it's all commercial across the street."

Buttner— "They've taken Wally over the coals for about a month. They've mentioned his firm represents so many cases out of all the total cases that were filed. They go into all the deals, certain battin' average and (laughter)."

Coleman—"Why are they going after you? I still can't understand it."

Buttner—"Because I'm a friend of the Mayor's. They're playing a vicious game. I don't give a ——. I tell them it's a free —— country. If they don't like it they can kick me off the planning board."

Mr. Buttner and Mr. Coleman then held a lengthy discussion about attorneys and architectural firms and Mr. Buttner offered to put Mr. Coleman in touch with a firm with which he said he was familiar.

Coleman—"What does he (Adams) do?"

Buttner—"He's a real estate man. But he's a phony real estate man. He never had nothing. He's one of those name guys. Ernie hasn't got anything. He's a bum. You couldn't even set down and talk intelligently to the guy. You couldn't sit down and get hooks or tells."

Coleman—"I met Abboud once, twice."

Dinner at Coleman's hotel . . . Carroll, Abboud, Dworak (seated), Coleman and Buttner (from left).

Buttner—"Yeah?"

Coleman—"I don't know from a hole in the wall. I'm telling you straight. Tell me how the thing works. Does it make logical sense? That's what I want to understand."

Buttner—"Well, here's the deal. Ron (Abboud) wants the construction of it. That's all he wants."

Coleman—"Yeah, and what does he do?"

Buttner—"It's a million-dollar project and that's a hundred thousand for Ron. Maybe, they normally, maybe they make only 80 thousand, under normal construction on any kind of project like this, it's 10 per cent. Years ago it was 25-per cent. Years and years ago. Competition today makes it eight to 10 per cent. So he takes 10 per cent and builds this. He's got a construction department."

Coleman—"How does he become the low bidder?"

Buttner—"He becomes low bidder on account of you say he's the low bidder."

Coleman—"I see."

Buttner—"In other words you bid the —— thing. You get five bids and you get together and negotiate the son-of-a-gun. He knows just about what it's going to cost him so you get five, I mean, uh, four other legitimate bids. Nobody else knows who the —— they are. You have sealed, closed bids. No open bids. It's closed bids. They have these all the time.

"They call in to see how they come in and you say 'You weren't low. Abboud bid on it. He was low.' You see what I mean? Meanwhile, you see, you got to get with Ron and say 'Ron, here's what I've got and you bid . . . ' Maybe he bid 10 thousand high and you say, 'Ron, look, I got this bid right here . . . ' and Ron says if this guy figures he could make it on this because he's figuring basically the same thing, and it's fairly close—maybe it's 50 thousand off or maybe a hundred. I'm just talking but this is by unit. You've got so many units. You get one basically down and multiply by, one hundred, 150 or two hundred, or whatever, it is. And that's it. Actually, these things aren't hard to figure."

Coleman—"Novak, he gets what? Three thousand?"

Buttner—"That's the way we're talking with Ron. And we were talking five thousand and I think he was talking bigger and I said, —, a guy doesn't want to hold up anybody. I said I would be ashamed to take a thousand bucks, really, but you got to understand the only reason I do this, if this was a legitimate. I don't mean legitimate, if this wasn't a controversial deal, they wouldn't get a dime. Know what I mean?"

Coleman—"It isn't a controversial deal."

Buttner—"This is what makes it hard."

Coleman—"It's a good project for the city."

Buttner—"——, It's hard to explain. When these —— —— people out there . . ."

Coleman—"All right, tell me."

Buttner—"This —— Council—if two people get in front of them they have to have something to back their backbone on."

Coleman—"So Novak gets a thousand, a few thousand. What does Adams get?"

Buttner—"Like I say, uh, what I was thinking about, this is what Ron told me, five thousand dollars. We're talking about seven, between the payoffs, seven to 10, between this roundabout thing. I says okay, Ron, I says I am going to see John. I says okay, if we can guarantee you your 10 per cent, you build that thing, get it off the ground, basically you pay that 10. Even if it is 15 you pay it out of the one hundred. He says 'If I can be guaranteed hundred thousand dollars profit and build the thing. I'll take care of it out of my end.' See what I mean?"

Coleman—"Does he have enough votes?"

Buttner—"I'm sure . . . " Mr. Buttner then discussed other matters which had been considered by the Planning Board; referring to them as "other deals."

Coleman—"Which deals?"

Buttner — "Some commercial zoning on a bar. I mean it's a small little shopping

Investor Says He Arranged to Pay Officials on Rezoning

Continued from Page 1

Barney," Mr. Abboud said. He cautioned Mr. Coleman that the payment to Mr. Novak should be in cash.

The "campaign contribution" to Mayor Dworak was first discussed September 9 after a dinner meeting.

Messrs Dworak and Coleman talked about the cost of a campaign. Mr. Dworak said it would be from 75 thousand to 100 thousand dollars.

There was discussion of a contribution.

Mr. Coleman asked if 20 thousand dollars would be enough.

"Yeah," was the Mayor's reply. The amount finally agreed upon was 25 thousand dollars.

The next afternoon the Mayor talked with Mr. Coleman again.

* * *

'Would You Have Vetoed It?'

He told the Chicagoan to make the payments to a specified corporation, a business which the Mayor described as "strictly legit."

At this time the Mayor agreed to a down payment of one-third.

At a meeting September 14 the Mayor told Mr. Coleman he would have vetoed the rezoning if Mr. Coleman hadn't promised the money.

"If I hadn't made a—you know—a contribution to your campaign you would have vetoed it?" Mr. Coleman said.

"I told you I've got a — — pressure on me right now," the Mayor said.

"You would have?" Mr. Coleman asked.

"Yes," Mayor replied.

The Mayor would not take a check which Mr. Coleman offered to hand him. He discussed with Mr. Coleman the payment of the "contribution" to the man who heads the corporation.

"There is no reason for him to meet me, really," Mr. Coleman said. "I don't even want him to know who I am . . . I'll give you the check."

"No, just sign it to him," the Mayor said.

Then the Mayor agreed to Mr. Coleman's paying five thousand dollars to the corporation immediately and the balance before April.

Mr. Coleman reports that this payment has never been made.

deal. The neighbors were up raising hell and stuff but he got it through. I know — well he had to pay somebody. When he makes a promise, he'll even go this far, he'll say to Adams, 'Ernie, (he's in real estate). Ernie, I got a piece of land. Put your sign up, for sale. I've got a customer.' This is the way he does it legitimately. He'll have a piece of land that's ready to be sold. And the commission, if the guy charges six per cent, say if it sells for 50 thousand dollars, would be three thousand dollars. 'Ernie, put the sign up and we'll write it up on your paper. I have to give you a commission of three thousand bucks.'"

Coleman — "What if the Mayor vetoes the deal?"

Buttner—"Well, five votes override the Mayor: If you get five votes the first time, he won't veto it."

Coleman — "Let's say we get four."

Buttner—"Well, I'll have to get to the Mayor. ——, he's my buddy. In fact, we'll talk to him ahead of time. If you are interested, uh . . ."

Coleman—"Can we get together with Novak and we'll get together with the Mayor before this happens? I'll have them up here to dinner so we don't go out."

Buttner — "We don't link the Council and the Mayor. You get to the Mayor and tell him who you are."

Coleman—"I met the Mayor . . . What about Bradley and Swigart?"

Buttner—"You don't talk to them dumb ——. Don't even talk to them . . . I can recommend certain contractors but I've got to stay out of the plumbing on this end. The heat's too strong for me. I want to stay on the Planning Board. I'm looking into the future. Even though I don't get this, you can never tell, some day I might be in a position. I might call and say 'I'm in a hell of a spot.' You can't beat friendship."

The talk then reverted to how Mr. Coleman should proceed.

Buttner — "Bring him and say, 'Steve, here's the deal. You get a commission.' Don't say payoff. 'You get a commission.' And give Steve (Novak) credit for getting you lined up with Ron, not me. Make Steve the big boy of the Council. (Laughter) This is politics. This entitles him to a commission from Ronnie. You know what I'm talking about? And then Steve gets the other boys. He's your 'in' into the Council."

Coleman — "Who's the 'in' to the Mayor?"

Buttner—"Oh, ——. The Mayor's no problem. He won't give you any problems . . . He wouldn't take a dime. All he would take on a controversial deal, he'd take a trip. Somebody gives him a couple tickets to go some place, anywhere, you know. That's the best thing. He likes to get out of town because the —— heat is on all the time. He likes to get away three or four days . . ."

Coleman—"Is he going to run again?"

Buttner—"Yes."

Coleman—"Why doesn't he get out?"

Buttner—"He enjoys it."

Coleman — "Who runs the city today? Between you and me, who is really running this city?"

Buttner — "——, to be honest about it, he's running it and guys like Novak and myself and Ron, in certain things we get things done but the undercurrent is so strong . . ."

Mr. Buttner then told Mr. Coleman how two policemen, one a relative of his wife, got in an accident during a party that he gave for the Mayor to entertain the press.

Coleman — "All I want to know is where you spent that 65 bucks for entertainment in Kansas City." . . .

Mr. Coleman then asked if there was going to be any problems with objectors to the rezoning of the property.

Buttner — "Oh, ——, you're going to have objectors. That's why you are going to pay the Council. They are going to have to sit there and take all the —— heat. That's why you're paying them. If you didn't have objectors, you wouldn't pay them. You're going to have two hundred people up there. I mean, you might, I don't really know.

"I'm not a rich man. Hell, I'm not a silk-stocking boy but I think both ways. I like to see a man make money. And I like to brush elbows with a man that's got money. I don't want to make 10 million but I'd like to make a million and do it halfway legitimately."

* * *

August 25

Tuesday a. m.

Tuesday morning, Mr. Abboud appeared, by prearrangement, with Councilman Ernest Adams to have breakfast in Mr. Coleman's room at the hotel. . . .

Coleman — "Hello, Mr. Adams."

As the three men ate breakfast the following conversation ensued; after it had been observed that there had been some opposition to rezoning the land at Eighty-first Street and Farnam Drive for the proposed cluster housing project Mr. Coleman wished to develop:

Adams — "In every neighborhood there has to be an extrovert, a guy on a white horse, always raising hell. All over town they have one. There ought to be a law against it all over the country."

Abboud — "Did you read Alden Aust's letter?"

Adams—"Uh-huh. We are having more —— trouble with that fellow, what's his name?" (An objector is named.)

Abboud—(Apparently looking at brochure.) "They are the type he is putting in."

Adams—"They are beautiful. Really are. John, what's your last name?"

Coleman—"Coleman."

Adams—"There is a TV guy here named Coleman, gives weather and everything and winds it up by saying, 'Good-night dear hearts.'"

Abboud—"This has been a battle all the way."

Mr. Abboud then told of his desire to attend the exhi-

—World-Herald Photo.
Stephen T. Novak
City Councilman

bition professional football game to be held at Rosenblatt Stadium on the following Saturday, August 29.

Abboud—"Where's mine (tickets)? I ordered them. I wonder if Charlie has still got them. I've got to have tickets for that thing Saturday night."

Coleman—"What business are you in, Mr. Adams?"

Adams—"Here's my card. Where else have you built?"

Coleman—"In Houston. We have an interest in one in Atlanta and an interest in one in Fort Worth."

Adams—"Got anything going in Lincoln?"

Coleman—"No."

Adams—"Well, if you get one, let us know."

Coleman—"We are always interested."

Adams—"Very close to the mayor there. Retired. Why he retired, I don't know. Played baseball with him."

Abboud—"Steve, Harry (a pause). Four votes."

Adams—"Steve, Harry, four votes? You are not counting me. I don't want to place myself in a position until I have checked it."

Coleman—"I don't want you to vote against it."

Adams—"How are you going to get four votes?" (Laughter).

Abboud—"We'll work on it. We'll all work on it."

Adams—"You want me to vote for it. Well, I'll say I'll vote for it right now. I'll try it."

Abboud—"All right."

Adams—"What do you want me to do—vote for it?"

Coleman—"Sure, I've spent a lot of time on this thing—a lot of money."

Adams—"I used to referee in the big Six—All over the Midwest." (More talk about sports.)

Adams—"We have a meeting at 7:30 tonight, be out about 10 o'clock."

Coleman—"I'll be in all day."

Adams—"Meeting tonight. It's going to be quite a storm."

Abboud—"I wish I could be there . . . I can't stick my nose up there."

Adams—"You've got a complex, an inferior (sic) complex."

Abboud—"No, I'd feel . . . I'm the most no-good, belligerent —— there is. You know it. I've got more guts than any human being, though."

There was then some talk of drinking.

Adams—"I don't drink very much. I turn down a hell of a lot."

Abboud—"You'd be an alcoholic if you didn't."

Coleman—"You'll come up for a drink, though."

Adams—"Yeah."

Coleman—"I would appreciate your help."

Adams—"We will have to work out some kind of an offense."

Abboud—"If you are not busy after that vote on the landfill, let me know, please."

Councilman Adams leaves.

Coleman—"Did you get his vote?"

Abboud — "I told him as soon as we can he will get his money, as soon as you are cleared so you wouldn't have a lawsuit."

Coleman—"Twenty 'til ten. Where's Steve? What is this guy (Adams)? Is he successful?"

Abboud—"Nice guy but he's dumb."

Coleman—"Let's call Novak. How much does Adams want?"

Abboud—"Five. I haven't talked with Steve."

Coleman—"Let's talk with him now."

Abboud—"First hear everything he's got to say. I asked him three or four times how many votes you've got."

Coleman—"Do you think he's (Novak) coming?"

Abboud — "He's probably out. I'll call his office."

The Novak visit was arranged and Mr. Coleman asked if Mr. Abboud thought it would be wise for him to ask Mr. Novak how much money he wanted.

Abboud—"I would definitely. How much are we talking about to Steve."

Coleman—"What should I call it, a commission? A commission?"

Abboud—"Call it a real estate commission. Of course, maybe he would want to negotiate and talk to me."

Coleman—"Let's wait a couple minutes for him."

Abboud—"He would tell me quicker than he would you."

Coleman—"Yes, we may be grounded out at the last minute. We discussed it. . . . Oh, what a way to make a living!"

Abboud—"I look at it strictly as a part of life. What the ——! It's a part of life."

Coleman—"I'll meet you at your office at 11 o'clock. We've waited a half-hour."

Mr. Abboud left and a short time later Mr. Novak came to the door.

Coleman — "How are you? Where were you?"

Novak—"The World-Herald was downstairs."

Coleman—"Big deal."

Novak—"No, I'm serious. I went by at about 10 'til nine and Ronine's car was out there so I started parking my car and there was The World-Herald. Right now I . . . you know, it's . . . especially associating with this guy."

Coleman—"What?"

Novak — "Ronnie." (Abboud.)

Coleman—"Are they after him?"

Novak—"You mean to tell me you didn't hear about it? Oh, ——, they are really after him. He has some zonings and that that we pushed through and Buttner, uh, they started with Buttner on your deal. They've been cutting this —— Buttner to pieces. Haven't you heard about it?"

Coleman—"No."

Novak — "You haven't? ——"

Coleman—"It just said he had some difficulties."

Novak—"Difficulties! From your deal The World-Herald hasn't stopped on Buttner."

Coleman—"Why? What did they say?"

Novak—"Oh, they wanted

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The John Coleman Story . . . . . Continued from Page 14

Coleman from Page 14

to know why he changed his mind. . . . "Who is your attorney?"

Coleman—"Ron Hunter."

Novak — "That's good. At least it's not somebody who has been on the take."

Coleman—"You tell me how it should be done."

Novak—"I think it will go through, myself. I don't know. I'll feel around a little. See, I've been gone. Since the last time I saw you, I've been gone. Just got back Sunday."

Coleman — "Do you think Ron (Abboud) is trying to make himself important in it?"

Novak—"I wouldn't let his —— name be mentioned in it. I don't mind telling you his name is the kiss of death right now."

Coleman—"How should it be done?"

Novak—"I always count the noses. Let me count the noses today and see how the vote's looking, will you?"

Coleman—"Will you meet me tonight and come on up?"

Novak—"We have a meeting tonight. I'll meet you after the meeting. Are you going to be in town then?"

Coleman—"Yeah."

Novak—"Let me see if I can meet you after the meeting, okay?"

Coleman—"Yeah."

Novak—"We'll be there 'til late tonight. This kid, Bradley, he worries me. I just left a good friend of mine and he told me to stay away—stay away from him. I shouldn't be telling you this but this is on the level."

Coleman—"I don't know what's going on."

Novak—"Ronnie's got a 54-unit apartment house down around there . . . right off of Ames at about Sixty-fifth Avenue. There is a —— sewer line. The thing floods. It's got rats. It's pretty bad. You know, the sewer. So I got into the Mayor and then the public works director and Harry (Trustin) got after them and Harry and I would save the Mayor out of hot water. We've been keeping him out of trouble. The —— is always in trouble and Harry and I always seem to bail him out."

Coleman—"What's the matter with him? I met him once."

Novak—"He's a nice guy but he's a dumb kid. I mean he's real nice, you can't help but like him. He's got too much mouth publicly. You can't do that, you know. I mean when I'm in the City Council you don't hear a word out of me. Everybody remarks how quiet I am. I'm the quietest guy on the council. I just sit there and wait and listen.

"I know what I'm going to do, how I'm going to vote. What's the use of making any noise about it? Well, anyhow, they claimed that this is private property and the city shouldn't be investing this money for private property. I look at it the other way. I

—World-Herald Photo.

C. R. (Barney) Buttner
Planning Board member

don't care whether it is you, Ronnie, or some guy I dislike, I mean, it's a nuisance, it's a public nuisance."

Coleman—"It's unhealthy."

Novak—"Yeah, it is. So I look at its differently. But it just so happens to be on Ron Abboud's property. It just so happens to be that Trustin and I pushed this whole —— deal. The Mayor went for it, Ron. . . ."

Coleman — "He crossed you."

Novak—"I don't care. He didn't hurt me any. You know, really."

Coleman—Yes, but it isn't right."

Novak—"I've been very effective with the board of appeals. Fairly effective. They take real good care of me because I don't blast them. You know what I mean. I'm the only guy who never talks bad about nobody. I'm the only guy who never talks bad about nobody, I just . . ."

Coleman—"Well, he's got a big mouth—it's dangerous."

Novak—"Yeah, well, anyhow, he's in trouble so now they are going to The World-Herald. You heard about that."

Coleman — "He said he's going to have them retract the statement or he's going to sue them?"

Novak—"Now, you don't fight the paper, John."

Coleman—"Of course not."

Novak—"They're too big. They are big people. So if they said it, forget about it. I got caught gambling by the vice detail—so they caught me in a poker game. ——, it's all forgotten. I am a member of the City Council. Boom! Here I am in the City Council and got caught in a poker raid."

Coleman — "Stir it up — they'll get antagonistic. Well, what do you think? How should it be handled?"

Novak—"It's going to be close. I am telling you the truth."

Coleman — "How do you think the whole thing should be handled?"

Novak—"I won't know until we talk to the people today. I'm gonna call Ronnie. Can I call him right at the office now?"

Coleman—"Yeah, call him."

Novak called 348-0440 as breakfast was delivered to the room.

Coleman — "Tell him to come over here."

Novak—"We'll wait 'til you get here."

Coleman — "Tell him to come over."

Novak—"That Vegas is swell."

Coleman — "How do you think this should be handled from here on?"

Novak—"I don't know until I talk, 'til I know how the votes are . . . I've gotta be honest with you. I don't know how many votes we got. I know we don't have Jacobberger. I don't think we will have Bradley and I don't think we'll have Swigart. Swigart talked against you already. He says 'I can't go for that' and I says, 'You're going to go for that —— union apartment at $75 a month and now you're going to cross up that $175 a month. You don't make sense. What's with you?, and he says, 'You're right, Steve.'

"Really, you've got to talk simple to simple people sometimes. They beat me on a zoning where we had a whole block. They turned me down on account of traffic and they was gonna go for a thing but had only one —— access road. And I was out to beat this deal. Well, you're wrong. I says, okay, Simple Simon, I gotta talk to you like I do my 14-year-old son. He turned me down on Seventy-second and Western."

There was a knock and Ronald Abboud was at the door.

Coleman—"Let's cover this quickly and get out of here."

Novak—"There is no point in him (Abboud) going up there today, is there? What could he do? You're the kiss of death right now."

Abboud — "Well, I'm not going up there. They are not picking on me for anything. They are picking on the administration."

Novak — "They're picking on you too."

Abboud—"Yeah? They are picking on the administration. What do they want with me?"

Novak — "Well, you are hooked up with it. They're blasting you right along."

* * *

August 26

Wednesday

On Wednesday morning Mr. Coleman had a meeting with Councilman Steve Novak and Ronald Abboud, operator of the Guarantee Company, in the hotel.

Abboud—"Do me one favor. Let me take you into whatever bank you expect to do business with. It will be a hell of a boost for me."

Novak—"John, if a guy goes to Vegas how does he get ahold of you for a budget car—call you in Chicago?"

There was no answer.

Novak — "Are they right there at the airport, too?"

Abboud—"Sure they are."

Novak—"John, I'll probably never call you."

Abboud—"Ernie was here—let's see—the day before yesterday."

Coleman—"What did Ernie say?"

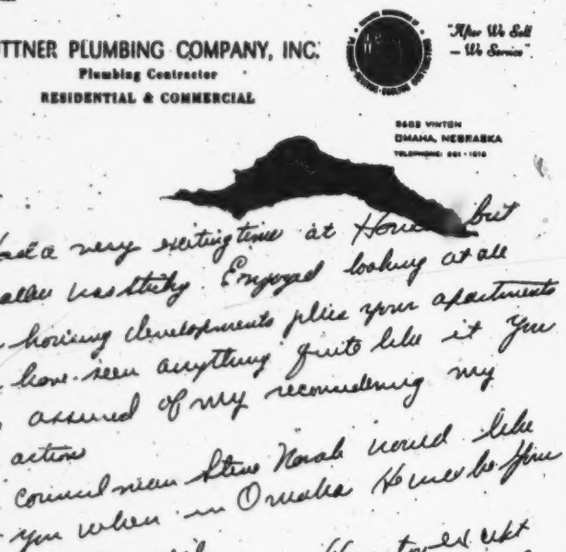
Abboud—"Ernie is in like Flynn—you can bank on Ernie."

Coleman—"What I should do is just go right out to the airport and get the first plane. When is the hearing, on the eighth?"

Abboud—"Two more weeks."

Novak—"We are really going to have a fight on our hands."

Coleman—"Should we have the same presentation that we had at the Planning Board?"



BUTTNER PLUMBING COMPANY, INC.
Plumbing Contractor
RESIDENTIAL & COMMERCIAL
"How We Sell — We Service"
9403 VINTON
OMAHA, NEBRASKA

John
Had a very exciting time at Home but
the weather was stuky. Enjoyed looking at all
the new housing developments plus your apartments
Never have seen anything quite like it You
can be assured of my recommending my
former actions
The Council men & Mrs Novak would like
to meet you when in Omaha Home be sure
lead into the council.
Everything was fine in Kansas City last
the entertainment we left on night in
Kansas city I found the Council men a
good time and we found them K.C.
Are enclosing the balance of our expenses
except ones signed by Jay
Hate to be seeing you soon in Omaha
OVER
Sincerely, Barney.

Letter from Buttner to Coleman . . . Torn place is where letter stuck to envelope flap. Note "over" instruction at bottom.

Abboud—"Emphasize the fact this is not cheap housing."

Coleman—"This is true. You cannot afford cheap housing."

Abboud—"It is not low-cost housing."

Coleman—"We seem to be in good shape."

Novak—"I seem to be confident at the moment. We can say it that way."

Abboud—"Yeah, it could change tomorrow. . . . We need five."

Novak—"Well, four will be all right."

Abboud—"No it ain't because they are going to have 20 per cent. . . ."

Coleman—"I don't think they are going to get 20 per cent because the people on either side aren't against us. Don't forget that."

Novak—"Yeah. It's 20 per cent of the adjoining property owners."

Coleman—"Right. I don't think you're going to have that problem."

Abboud—"But I would like insurance. That's all."

Coleman—"Do you think it will go to a vote on the eighth?"

Novak—"Yeah, yeah, yeah. There's no doubt in my mind. It's got to go."

Abboud—"You mentioned to John the other day you were a little short. Now, if you are, John says he wouldn't mind advancing you something."

Novak—"No, I'll wait until this goes through. I'm short but that's all right. I've got so

INFERNO - 23.75
Four Wheels 7.21
TIP Bell Boys 3½ days 8.00
Food Guests 23.50
Hotel Hilton 34.20
CAB FARES
ENTERTAIN 65.00
$177.16
EXPENSE

Writing on back of Buttner letter . . . details Kansas City spending. Cab fare amount is torn out; it was 15 dollars.

——money coming to me that it is coming out of my ears except I don't have it in my pocket. Do you think things are going good, John? I'm going to the bank and borrow some money. I have to pay a guy some money to keep my word."

Coleman—"How did you make out in Vegas?"

Novak—"You never make out there."

Coleman—"You aren't kidding."

Novak—"To tell you the truth, John, I was there nine days and, listen to this, it only cost me two hundred dollars."

Abboud—"Two hundred dollars?"

Novak—"Jackie Gaughan, he wasn't in town, but this place. . . ."

Abboud—"Where did you stay—at the El Cortez?"

Novak—"No, I stayed at the Sands. . . . I stayed three days at the El Cortez but when I was going back to Omaha."

Abboud—"Who made your contact for you?"

Novak—"I know him personally" . . .

Novak—"Ever since I got involved in politics, I've been the brokest I have ever been in my life. I've been spending money. Isn't that a shame!"

Abboud—"You go all over the country and live like a —— millionaire."

Coleman—"That's all that's important as long as you live like one."

Novak—"No, it bothers me."

Abboud—"You were driving a 1965 Cadillac out in Las Vegas. You have had it for the last six months. You don't even have to pay for the ——. People pay his way all the way and he's broke."

A burst of laughter.

Novak—"You still have to pay for something when you go some place. Isn't that right, John? . . . I'm a funny odd-ball. I don't like to freeload."

Abboud—"I don't know how you got by on two hundred dollars. I don't even come near that. If I get by for a grand I'm satisfied."

Coleman—"Two hundred dollars?" . . .

Abboud—"You know what I spend in three days—a thousand. . . ."

Novak—"I was going to go to Minnesota this week end."

Abboud—"Stay here and work a little bit."

Novak—"I said I was supposed to go. I've got to cancel out on that trip."

Abboud—"——right. Get some work done."

Coleman—"What are we going to have to give . . . you know, you tell me."

Abboud—"Five."

Coleman—"Five thousand? After it goes or before?"

Abboud—"Oh, no! After it goes."

Novak—"It's got to be after it goes."

Abboud—"If it goes to court, it is still payable to the persons."

Coleman—"Well, I'm not concerned about court."

Abboud—"I know but you can't . . . that's what I told him . . . if it goes to court . . ."

Novak—"It's no deal. John, you have to be protected you know."

Abboud—"Yes, you've got to be treated fairly—at least a little white."

Novak—"John's got a lot of money invested in this thing, haven't you John?"

Coleman—"Are you kidding?"

Novak—"Jay Carroll (Houston architect) told me."

Coleman—"I bet I have close to 50 thousand dollars invested in this."

Novak—"That's what Jay said, 40 or 50. I said 'You're kidding.' Jay Carroll said: 'Like hell I am.' "

Abboud—"John, call me."

Coleman—"I think I may go out to the airport and get on the first — plane."

Novak—"John, if anything develops between now and when you're coming back, I'll have Ronnie call you right away."

Coleman—"I can come back next week."

Novak—"You don't have to."

Abboud—"You don't have to come back 'til the meeting."

Coleman—"Maybe I'll come back a few days before the meeting."

Abboud—"Yeah, do that."

Coleman—"What arrangements did you two work out?"

Novak—"Nothing, we will talk about it later."

Mr. Abboud took Novak home and then returned to the hotel and picked up Mr. Coleman and they went to Rose' Steak House.

There Mr. Abboud told Mr. Coleman that Councilman Novak "wanted money now."

That night Mr. Coleman, after having been away from Mr. Abboud for some time, was handed a reminder at the hotel desk that Mr. Abboud had telephoned him and wanted him to call him at the Lamplighter. Mr. Coleman made the call and told Mr. Abboud that he could not meet him there but that he would meet him in the cocktail lounge of the hotel and Mr. Abboud agreed.

Mr. Coleman in his room wrote a two-thousand-dollar check payable to the Steve Novak Realty Company.

Mr. Coleman then met Mr. Abboud and his wife in the cocktail lounge and they had several drinks. Mr. Coleman and Mr. Abboud went to the 20's and a place called Mickey's after they had taken Mrs. Abboud home.

After leaving Mrs. Abboud, Mr. Coleman and Mr. Abboud attempted to locate Councilman Novak to give him the check but could not find him.

Mr. Coleman returned to his hotel at about midnight.

* * *

August 27

Thursday a. m.

Mr. Abboud came to the hotel and picked up Mr. Coleman at about 9 a. m. and later the two men and Councilman Steve Novak had breakfast.

That afternoon Mr. Novak went to the hotel room of Mr. Coleman and the following conversation took place:

Novak—"I was down at the attorney's office. I got a —— ticket down there. The cop gave me a ticket and I'm going to pay for it. I can't take that kind of publicity for two bucks."

Coleman—"What happened?"

Novak—"I just got the ticket and I'll pay . . . two bucks. I went down to see the attorney. I've got some things going."

Novak—"I worry about it more than you do and it's your ——money."

Coleman—"Oh, no. I mean the time and the effort that has been put into it."

Novak—"You know I worry about things like that."

Coleman — "How are you going to plan . . . ?"

Novak—"I am going to go down there and I am going to say I went out there and I went up and down and walked the area . . ."

Mr. Novak went into a lengthy discourse on what he was going to say before the City Council.

Coleman—"That Adams is something."

Novak — "He's a vulture. Have you ever seen a vulture? That ——has got both hands out. And there's talk around town about it now."

Coleman—"Does he make money that way?"

Novak—"He's got to. His prices are high."

Coleman—"And he doesn't do a ——thing."

Novak—"Yeah, and I do his dirty work and it burns me up."

Coleman—"I like Barney."

Novak—"Isn't he nice?"

Coleman — "He's a nice guy."

Novak—"He and I get along good together."

Coleman—"He's the one!"

Novak—"You see how we get along? I've got a lot of respect for him."

Coleman — "His word is good."

Novak—"His word is good. He will take heat. If you take heat and don't fight it, you are better off. It's when you fight it that you are in trouble."

Novak — "I got a deal through the other day on Center Street. There was no—— publicity on it. It was on city property. But there was no grass hanging on it, either . . . S-m-o-o-t-h."

Coleman—"Does he talk a lot?"

Novak—"He brags a lot."

Coleman — "That's bad, Steve."

Novak—"I told him I saw those apartments in Houston, I mean California. Does he know we have been down there?"

Coleman—"Barney told him. Barney talks a lot. It makes me look bad."

Novak—"Yes."

Coleman—"You know, if he keeps talking around, other people will want a trip."

Novak—"I told the press I saw them in California."

Coleman—"There's nothing wrong with it."

Novak—"You are drinking Ballantine."

Coleman — "Want to try it?"

Novak — "I don't drink, John. I don't drink or smoke. Didn't you know? I smoke cigars once in a while but

—World-Herald Photo.

Ernest A. Adams
City Councilman

never in public. I want this (indicating the bottle)."

Coleman—"All right. I'll put it in here (sack)."

Novak—"I got a guy in my car."

Coleman — "We had this made out to the real estate company." (He was referring to the two-thousand-dollar check).

Novak—"John, I can't take a check."

Coleman—"All right. What shall I do?"

Novak—"Well, here's why. I talked to the attorney and he said the worst——thing I could do . . . we'll all get in trouble. We'd get buried."

Coleman —. "Who should I . . ."

Novak—"He said it should have been cash. So, uh, I know this is a rough time, you don't want to stay here too long."

Coleman—"No, I'll get it done."

Novak—"He said never take a check. I just told him. I told you I got that ticket."

Coleman—"Should I make the check out to Abboud?"

Turn to Page 16, Column 1

Procedures for Rezoning; Aim: Orderly Growth

Zoning codes are written to provide for a city's orderly growth.

Amendments to zoning codes must be approved by the City Council, acting on the recommendation of the Planning Board.

The Home Rule Charter of 1956 provides for a Planning Board of five members appointed by the Mayor. They are named to five-year terms and serve without pay.

Administration of zoning codes is the responsibility of the Planning Director. The Mayor has power to appoint and remove the Planning Director, who is head of one of the seven departments in the city's executive organization.

The Planning Board reviews zoning ordinances and amendments after they have been studied by the Planning Director.

To change the classification of property, the owner or a representative submits an application to the Planning Director.

His staff reviews the application, notifies the immediate neighbors and schedules it for public hearing.

The Planning Board usually conducts hearings the first Wednesday of each month. At that time, applicants state their reasons for wanting the changes. Objectors may step forward.

The board then takes the request under advisement. Board members study vicinity maps and often inspect the property. They compare the proposal with a master land-use plan.

At a later meeting—which interested parties may attend—the board votes whether to recommend approval or denial of the request.

If three favorable votes are lacking, and cannot be obtained within 30 days, the application is judged to have failed. It is sent to the Council as a denial.

The Council can vote to accept a denial, in which case the application dies for one year.

Five votes on the seven-member Council can override the board's denial.

If the board approves an application, an ordinance is drafted to amend the zoning code. Like other ordinances, it is introduced for the first of three readings—usually spaced at one-week intervals.

No Council action can be taken until the third reading, when a hearing is held before the Council.

Four Council votes normally are needed to enact zoning legislation. However, if 20 per cent of the adjoining property owners petition against the change five votes are required.

If the Council adopts an ordinance, it is sent to the Mayor within 96 hours of the adjournment of the Council meeting. He returns the ordinance to the City Clerk within seven days of receiving it, with or without his approval, or with his veto.

The Mayor must attach a written statement to any veto, explaining his reasons.

The Council can override the Mayor's veto with the affirmative vote of five members.

The City Council passed an amendment to the zoning code last March governing what planners call "planned unit developments."

In the interest of harmonious arrangement of groups of buildings, the ordinance allows an architect to waive certain setback requirements.

Setbacks differ in each zoning classification. The more restrictive the zone, the greater the distance the structure must be set back from its lot lines.

The planned unit development ordinance allows more than one building on a lot but requires open space in the area comparable to what would be required under strict application of the zoning code for the same area.

Development plans must be approved by the Planning Director, the Planning Board and the Council. Often, architects' plans for such a project are submitted as a companion to the rezoning request.

This was the case with the Coleman-Carroll planned unit development, the third submitted to the Council since the ordinance was passed. Mr. Coleman was trying to get his proposed site rezoned from first residential to seventh residential. He also needed approval of his planned unit cluster.

The John Coleman Story . . . . . Continued from Page 15

Continued from Page 15

Novak—"No, I don't want Abboud mixed up."

Coleman—"What if I just put commission, name a piece of property and you cash it out of town?"

(Long pause).

Coleman—"Can I say . . . what if I put commission on it?"

Novak—"I don't want to take no check. He says you can get buried. Are you going to be in town this Friday?"

Coleman—"I am going to try to get out. What time is your Council meeting?"

Novak — "Four o'clock. What time are you going to leave? I can call you and tell you more about it."

Coleman—"Well, I'll wait for you."

Novak—"Okay."

Coleman—"Take this and see if it's all right, then write on the back 'Commission' or something."

Novak—"Okay."

Coleman — "Call me back and let me know."

Novak—"I'll see you tomorrow."

Coleman—"I'll see you today. What are you doing tonight?"

Novak—"I've got something going."

Coleman—"Do you?"

Novak—"Yeah."

Coleman—"Maybe I'll see you later."

Novak—"Okay."

* * *

September 7

Monday p. m.

Councilman Steve Novak went to Mr. Coleman's room at the hotel and Mr. Novak told him the contents of several letters that he had received in opposition to rezoning the 6½-acre tract at Eighty-first Street and Farnam Drive.

Novak — "We have gone over this——thing 20 times. We can't lose. We can't lose."

Coleman—"Was that check any good? Did it bounce?"

Novak—"I gave it to Abboud because I couldn't handle it in my name."

Coleman — "What do you want me to do with it?"

Novak—"I didn't hold it."

There was more casual conversation and then Mr. Coleman returned to the subject of the check.

Coleman—"Listen, I want to get that check back because I don't want it laying around. I don't want Abboud to have it."

Novak—"Well, anyway, he got a hold of it. So you don't want him to hang on to it, huh? Don't worry about it."

They then discussed the trip that Councilman Novak and Mr. Buttner made to Houston to inspect a project there.

Coleman—"Do you think this trip is going to break tomorrow?"

Novak—"About Barney going?"

Coleman — "Yeah, there's nothing wrong with the —— thing, I'm telling you."

Novak—"I told them I saw it in California, these houses."

Coleman—"And you're sure they don't know you've been there?"

Novak—"I'm positive of it. Nobody knows."

Coleman — "Barney hasn't said anything?"

Novak—"He better not. I didn't say anything. I'll deny it."

Coleman — "I don't think any crime was committed."

Novak—"Jay (Mr. Carroll) came in Sunday night. I looked for you last night."

Coleman—"I wasn't in. I was up in Michigan."

Novak—"I called you a couple of times."

The conversation then switched back to the problem of getting a favorable vote on the rezoning.

Coleman—"I'll settle for four. Now let me ask you this question. Is the Mayor—can he vote it?"

Novak—"He won't veto it."

Coleman—"He will not veto it?"

Novak—"He better not."

Coleman—"Why? You know what? I would like to get a hold of the Mayor. I would like to spend some time with him."

Novak — "Him veto that? With Trustin and me being for it? You have got to be kidding!"

Coleman—"Why?"

Novak — "We're the only two guys that ever defend him. He couldn't veto that and survive."

Novak—"Abboud gets mad at me. I don't tell him nothing."

Coleman — "I wish you hadn't given him that check."

Novak — "Well, you told me . . ."

Coleman—"Why didn't you just send it back to me?"

Novak — "I don't know where to get a hold of you."

Coleman—"Oh, come on."

Novak—"I don't."

Coleman—"Why didn't you keep it?"

Novak — "I was getting kind a nervous, nervous having it around."

* * *

September 8

Tuesday p. m.

Mr. Abboud came to Mr. Coleman's room with Jay Carroll, Mr. Coleman's architect from Houston, Tex., present.

They discussed the City Council not voting on the rezoning project that day.

Coleman—"How much is Adams?"

Abboud—"It won't cost you one——dime more than I told you it would."

Coleman — "How much is Adams?"

Abboud—"Adams is five. Somebody else is 10."

Coleman—"What's the matter with you? You can talk in front of Jay!"

Abboud—"Steve is 10. Barney's 10. I'm taking care of 13 of it."

Coleman—"You are taking care of 13. Who am I taking care of? Steve?"

Abboud—"Steve and what's his name."

Coleman — "Adams. That's 15 grand."

Abboud—"Right."

Coleman—"How about Barney?"

Abboud—"I'm taking care of Barney."

Coleman—"That's another 10 . . . So, it's 38 thousand bucks all together." (A mistake in addition was made here.)

Abboud—"You're —— —— right. That's a lot of—— money."

Carroll—"Oh, my gosh."

Abboud—"It will happen next week but here's the thing Steve told me. Jay, here's what he said."

Carroll — "What was wrong?"

Abboud—"Nothing."

Coleman—"Steve gets the house, doesn't he?" (On a previous trip past the 6½-acre tract at Eighty-first Street and Farnam Drive, Mr. Novak had asked Mr. Coleman if he could have a house valued at approximately 40 thousand dollars which would have to be moved to build the project.)

Abboud — "Well, I don't know . . . if it can be moved, John, I really don't."

Coleman — "They can be moved."

Abboud — "Well, if you could move it, I don't know if you could move it—don't say that. I moved one the other day and you know what we had to do. We had to knock off part of it to get it by a tree."

Mr. Abboud complained about "the stupidity" of Mr. Buttner and Councilman Steve Novak making the trip to Houston.

Abboud—"Barney is to say he definitely went down on his own money and had nothing to do with what go ever. Whatever you do, whatever you do—if you've got a mouth full of blood, swallow it."

Coleman—"That's true."

Abboud—"Don't admit one ——thing about Barney going down there at all."

Coleman—"The trip was an official trip."

Abboud—"You don't know nothing about it. You never heard that he came down to your place—so that's it."

Coleman—"So what if they trace the——tickets?"

Abboud—"Did you pay for 'em? Yeah, and now you want to——give Steve a check for two thousand dollars."

Coleman—"Yeah, he wanted . . ."

Abboud—"He never wanted a check. You wanted to deduct it. All you're doing is snarling things up."

Coleman—"All right, how should I handle the two grand now?"

Abboud—"The two grand should be cash. Otherwise . . ."

Coleman — "Give him cash?"

Abboud—"All right, if you want to deduct it you give it to me and I'll issue him a commission check. You can pay it to me for any kind of——fee as you please, as long as I get to deduct it when I pay him the commission. I told you that from the——beginning."

Coleman—"All right. Does he want it tomorrow?" Silence. "Does he want it tomorrow?"

Abboud—"How do I know what he wants?"

Coleman—"All right."

Abboud — "All I'm telling you is this . . ."

Coleman—"Can you guarantee it will be deducted from the 10?"

Abboud—"Of course."

Coleman—"All right."

Abboud—"Have I ever said anything that hasn't been right to the——wire?"

Coleman—"Well, we didn't get the zoning through today." (Laughter.)

Abboud—"Well, it isn't my fault that you're giving trips, say, to New York and Las Vegas."

Coleman — "What do you mean? What are you talking about?"

The conversation veered to the number of votes Mr. Coleman could count on at the next meeting of the City Council. Then after some discussion about whether the Buttner-Novak trip would become an issue, Mr. Coleman asked:

"Do you want to go over now or tomorrow with Jay on how you are going to handle the contract?"

Abboud—"All you do is bid it out and let us know what the low bid is and then we'll sit down and check together."

Coleman—"Ron, why don't you run for mayor?"

Abboud — "Why should I run for mayor—I have enough trouble now . . ."

Coleman—"If I give you a check I'll make it out to Abboud Construction or Guarantee."

Abboud—"All right. You tell Steve that or Steve will think I told you to. I told you to do that from the beginning and you wouldn't do it. You —— around and . . ."

Coleman—"I didn't want to get any more people involved."

Abboud — "Why?"

Coleman — "Why? Because you could hold it over my head or hold it over Steve's head if you have a fight with him."

Abboud — "Hold it over Steve's head? Do you realize I could bury Steve so —— deep it's unbelievable?"

Coleman—"You could bury everybody on that City Council?"

Abboud—"No—only 65 per cent."

* * *

September 9

Wednesday a. m.

Mr. Coleman was dressing as Mr. Novak came to the door of his room.

Jay Carroll (Mr. Coleman's architect from Houston, Texas) came in to the room at 10:29 a. m.

Breakfast was ordered and Councilman Novak told how a certain attorney moved in after one rezoning case had been turned down three times and how he had pushed it through, seemingly with ease.

Carroll—"Well, you know we're pushing against this weather deal. And if that thing gets hung up in City Hall . . ."

Novak—"I'll guarantee you will get it real quick."

Carroll—"They can't jockey us around for six weeks?"

Novak—"I'm pretty well liked down there at City Hall. Everybody likes me. Like I'm here—I'm social."

Carroll—"That makes you the greatest."

Novak—"I'm the best-liked councilman there is. I'm not bragging on myself . . ."

Coleman—"I'll have a commission check made out to Abboud Realty."

Novak—"Okay—let's go."

Coleman—"What are you thinking of?"

Abboud—"I'm thinking about what deal I can apply this (check) to. I want to apply it to some certain deal."

* * *

September 9

Wednesday p. m.

After meeting in the room of Mr. Coleman at the Blackstone Hotel Mr. Coleman gave a dinner for several men in a private dining room. Mayor James Dworak and Safety Director Chris Gugas were present at the meeting. Others were investment men, who are associated with Mr. Coleman, and Jay Carroll, Mr. Coleman's architect from Houston. Also present was Ronald Abboud, contractor; Barney Buttner, Planning Board member, and Councilman Steve Novak.

Mr. Gugas left as the rest of the party went to the dining room at 7:50 p. m.

Near the end of the dinner Mayor Dworak indicated to Mr. Coleman that he wanted to talk to him away from the others. The two men entered Mr. Coleman's room at 9:06 p. m. after walking up the stairs rather than using the elevator.

Here, in part, is the conversation that took place:

Coleman—"I tell you they always keep my room full of Scotch."

Dworak—"That's more than I can say."

After some more casual conversation Mayor Dworak then said:

"I'll tell you one thing, John, I never believe in —— —— anybody."

Coleman—"No, let's talk right on the table."

Dworak—"I think you got three votes."

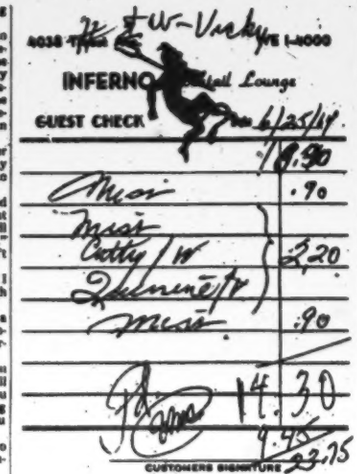
Coleman—"Yeah."

Dworak—"But those other two . . ."

Coleman—"Who do you think our three votes are?"

Dworak—"Novak."

Coleman—"Yeah."



Kansas City bar tab . . . from the Inferno.

$15.00 CAB FARE
$65.00 Entertainment Comp
22.00 MEALS, KC
ENROUTE
HOTEL
INFERNO

Back of Inferno tab . . . Lists Kansas City items.

Dworak—"Trustin."

Coleman—"Yeah."

Dworak—"Adams."

Coleman—"What do you think we should get? Six? Or five or what?

Dworak—"If you got five, forget the six."

Coleman—"Do you think, uh, we certainly don't have Jacobberger."

Dworak—"He's gone. He's not even going to be there. So forget him."

Coleman—"All right."

Dworak—"He's gone."

Coleman—"Where's he going?"

Dworak—"This guy's on the board of directors of the American Kennel Association. He's gone some place, to New York City or Fort Worth or Houston or some —— place. So he's gone, forget him."

Coleman—"So we have Adams. Do you think we have Adams?"

Dworak—"Abboud says you got him so you got him."

Coleman—"Is Abboud powerful in this city?"

Dworak—"Only with Adams."

Coleman—"Only with Adams?"

Dworak—"Only with Adams. Nobody else."

Coleman—"Why is he powerful with Adams?"

Dworak—"Through real estate deals."

Coleman—"Is that right?"

Dworak—"Abboud can push deals to him where Adams can make a few bucks. So that's it."

Coleman—"Steve Novak we have."

Dworak—"Uh huh. Steve there is no question about."

Coleman—"Bradley?"

Dworak—"The only reason; you got Bradley, if you got him, and I question whether you got him, is that he thinks I'm against the deal."

Coleman—"What time can I come down for my key to the city?"

Dworak—"You can come down any time."

Coleman—"Shall I come down around 11?"

Dworak—"All right."

Coleman—"All right. Give Jay Carroll one because he would really like it."

Dworak—"All right."

Coleman—"Would you?"

Dworak—"Sure."

Coleman—"Even if you don't give me one, give Jay one."

Dworak—"I'll give you both one."

Coleman—"How about Bradley? Can't we count on him?"

Dworak—"Nope. Have you talked to Bradley?"

Coleman—"I've never met Bradley. I have never met any of these kids except Novak."

Dworak—"And Barney."

Coleman—"Well, you'll never meet another like Barney, I'll tell you."

Coleman—"Isn't he a nice guy?"

Dworak—"That —— —— —— ! He's going to kill me."

Coleman—"Why?"

Dworak—"You ask why! Were you in Houston?"

Coleman—"Never. I wouldn't go. I couldn't go . . . So we got—Abboud says we got Adams. Do you trust Abboud?"

Dworak—"Yeah."

Coleman—"You do?"

Dworak—"Yeah."

Coleman—"Are you a good pal of his?"

Dworak—"Yep."

Coleman—"You trust him?"

Dworak—"Yep. I trust him as far as Adams is concerned."

Coleman—"Now we have Steve Novak."

Dworak—"Yeah."

Coleman—"You know I've spent about 13 to 14 months on this deal?"

Dworak—"Yeah."

Coleman—"And it's so —— good for the city."

Dworak—"It is."

Coleman—"Don't you agree?"

Dworak—"Correct."

Coleman—"What do you think I can do to insure it? Straight."

There was a long silence.

Coleman—"I'm listening."

There was another long silence.

Coleman—"Can you be of some help?"

Dworak—"I can veto it."

Coleman—"You can veto it?"

Dworak—(Laughs.) "I can."

Coleman—"What are we talking about? When's the campaign coming up?"

Dworak—"Sixty-five."

Coleman—"This coming year, April, 1965."

Dworak—"That's right."

Coleman—"And campaigns cost money."

Dworak—"They sure es —— do."

Coleman—"So how much do you want from us? How much; you know, so it doesn't look too obvious, how much should we give?"

Dworak—"Well, I don't know what your deal is all about."

Coleman—"I'm serious, for your campaign."

Dworak—"I don't know."

Coleman — "You're talking to a novice. As far as, uh, what does a campaign cost?"

Dworak—"Between 75 and a hundred G's."

Coleman—"A hundred thousand. How much do you think you have raised so far?"

Dworak—"Two."

Coleman—"Two thousand?"

Dworak—"Uh huh."

Coleman—"I can't, let me tell you, I cannot give you a hundred thousand dollars."

Dworak—"I didn't ask for . . . I haven't asked you for a thing."

Coleman—"I know that. Shall we give 20 thousand to the campaign, without it looking obvious?"

Dworak—"Nobody is going to know about it."

Coleman—"How shall we give it?"

Dworak—"You name it."

Coleman—"I don't like to, you know. Well, how do you do it? I don't want to buy funerals. (Laughter.) You know what I mean."

Dworak—"Yeah, I know what you mean. What are you talking about? Are you talking about . . ."

Coleman—"I'm talking about, uh, you know."

Dworak—"A corporation?"

Coleman—"Can I give it to a corporation? Which one?"

Dworak—"I don't even . . ."

Coleman—"Is 20 thousand, you know, is 25 thousand sufficient?"

Dworak—"Yeah."

Coleman—"It is? How should I give it? Is there any way . . ." The telephone rang and Mr. Coleman answered. "That was B. B.—Barney Buttner," Mr. Coleman said.

Dworak—"That ——."

Coleman—"How can I give it? Seriously, You tell me. Who should I make the check out to for 25 thousand, uh, 20? To a corporation where I can have a legitimate expense?"

Dworak—"To a corporation. I can't tell you now. I can tell you tomorrow."

Coleman—"Can you?"

Dworak—"Yeah."

Coleman—"Do you want to have breakfast with me?"

Dworak—"Yeah."

Coleman—"What time?"

Dworak—"You name it."

Coleman—"I'm o'clock."

Dworak—"Okay."

Coleman—"Then I'll go down with you and get the key to the city. Let's have breakfast."

Dworak—"Here?"

Coleman—"Yes, I don't want to go out. I don't think it's smart for us."

Dworak—"All right, you mean here."

Coleman—"Yeah."

Dworak—"All right."

Coleman—"Well, you figure out a way to do it and I'll have it for you next week."

Dworak—"Uh huh."

Coleman—"I'm a real babe in the woods. Now we have spent 13-14 months here. I have jacked around for six or seven months. You know what I mean."

Dworak—"Yeah."

Coleman—"You know when I met you was the first day things started to turn. Why, I'd hate to tell you how much money I've spent in this town."

A long conversation took place here in which the Mayor closely questioned Mr. Coleman about how much was spent on Mr. Buttner's trip to Houston. At no time did he mention that Councilman Novak had been with Mr. Buttner nor did he talk of the stopover the two men made in Kansas City.

There was more discussion about meeting for breakfast. Mr. Buttner knocked on the door and was at first told not to come in but was called back.

Just before Mr. Buttner entered the room Mr. Coleman said to the Mayor:

"Come here. Is 20 thousand enough for the campaign?"

Dworak — "Twenty-five thousand."

Coleman — "Twenty-five thousand?"

Dworak—"Later."

Barney Buttner then entered singing "There she goes —Miss America."

Coleman—"Boy, the newspaper really gave me some real friction, a lot of coverage."

Dworak—"John, you don't know what I've been through in this —— town."

Coleman—"Why do you want to run for Mayor again?"

Dworak—"I want to beat those —— —— again. Beat 'em last time. I want to beat 'em again. Because this way my friends get taken care of and their friends go down the ——."

Coleman—"Who are their friends?"

Dworak—"Leo Daly, Morris Jacobs, Peter Kiewit, all the guys who owned this town in the past. They don't own it any more."

Coleman—"They don't?"

Dworak—"No."

Coleman—"I'm using an out-of-town architect."

After much conversation and some telephone calls about the entertainment for the rest of the evening, Mr. Coleman went out with some of the other guests, leaving the Mayor and Mr. Buttner in his room. Before leaving Mr. Coleman again mentioned meeting the Mayor for breakfast.

* * *

September 10

Thursday a. m.

The Mayor did not come up for breakfast as planned. In discussing a payment of two thousand dollars to Councilman Novak, Mr. Abboud advised Mr. Coleman to "put it down as consulting fee" to him and that he would pay Mr. Novak out of one of his business accounts.

Mr. Abboud then said: "Jim Dworak doesn't realize the connections I personally have."

Coleman—"I think he was trying to scare the —— out of me."

Abboud—"You don't have anything to worry about. You'll have it zoned next week."

Coleman—"You think so? How many votes do you think we have?"

Mr. Abboud did not answer and a short time later Jay Carroll, Mr. Coleman's architect, came in. Mr. Abboud said that the Mayor was a fine person but that "he doesn't amount to anything, we override him any time we need to."

Mr. Abboud then appeared to be shocked about the Mayor wanting campaign funds and said "if you feel like giving him a few bucks, all right, but it isn't necessary."

Councilman Steve Novak arrived.

Coleman—"We're talking about this and that. We're talking about two grand. Now, how do you want it made out?"

Abboud—"Abboud Construction Company."

Coleman—"Is that right?"

Abboud—"You're supposed to pay it to the Guarantee Real Estate Company but this is better, actually, because uh, —we will—well, maybe Abboud Investment would be better because that way they'd never trace it. And then I'll pay you (Councilman Novak) a commission and they'll never . . ."

Coleman—"What would you pay? What's company would you pay a commission out of?"

Abboud—"I won't pay him out of the same company. I'll pay him out of the Guarantee Company."

There was no answer and the check was handed to Mr. Abboud in the presence of Mr. Carroll and Councilman Novak.

* * *

September 10

Thursday p. m.

Mayor Dworak came to Mr. Coleman's room in the afternoon after failing to keep his morning appointment. He and Mr. Coleman discussed how Mayor Dworak went into politics.

Coleman—"Do you like it?"

Dworak—"Oh —— yes. It's really a challenge. I've got a b—— of a council to deal with as you know. Steve Novak and Harry Trustin are the only two on the council that are worth a ——."

Coleman—"Is that right? Steve didn't have to run, did he?"

Dworak—"No, he was appointed. To fill the vacancy of a guy who was elected to the County."

Coleman—"What is the problem on the Council?"

Dworak—"Seven guys going seven directions. They're never together. They've been fighting me for

Omaha World-Herald Photo.
Ronald J. Abboud
builder

three years with the exception of Trustin and Novak."

Coleman—"Will you get a new council?"

Dworak—"They're elected."

Coleman—"Are you going to back them?"

Dworak—"No. Too many of these guys don't stand a chance of getting re-elected anyhow."

Coleman—"Is that right?"

Dworak—"Yes. They've been such a bunch of heels. They've been whang-banging me every chance they get."

Coleman—"Really."

Dworak—"Yeah, with the two exceptions."

Coleman—"Why do they do it?"

Dworak—"Just to get publicity."

Coleman—"How about Bradley?"

Dworak—"Oh, he's a no good ——!"

Coleman—"How about Adams?"

Dworak—"Oh, that ——. You never know about him. He's with you one week and against you the next. That's the kind of —— they are. I just go around to the back door and they never know what happened . . ."

Coleman—"How is our deal?"

Dworak—"Pretty shaky."

Coleman—"Is that right?"

Dworak—"I talked to the city attorney and I said, 'How does it look to you?' He said 'It looks to me like it's going down the drain'."

Coleman—"What do you think we should do to insure it?"

Dworak—"Steve can be a big help to you."

Mr. Coleman then asked if Bradley could be of help too.

Dworak—"I wouldn't go near the ——. Steve told us last night he told Bradley that I'm against the project and that he'll vote for it, maybe."

Coleman—"Is that why he'll vote for it?"

Dworak—"That's the only reason."

Coleman—"Is that right?"

Dworak—"Yeah, if I came out openly for your project, it would kill it."

Coleman—"Doesn't it frustrate you?"

Dworak—"No."

Coleman—"Doesn't it bother you?"

Dworak—"No. I've learned how to work my way around the ——. The first couple of years it was miserable as ——, then I learned the ropes and when I want something done I get it done, that's all."

Coleman—"So, you think the deal looks shaky?"

Dworak—"I sure do."

Coleman—"What do you think we ought to do?"

Dworak—"Pull out all the stops. Do anything you can do."

Coleman—"I've got a —— of a lot of money invested."

Dworak—"You should have somebody working on it."

Coleman—"Who do you think I should get?"

Dworak—"I could do just as good a job as anybody. With Abboud working on Adams. Abboud tells me Adams never doublecrosses him. I don't believe it."

Coleman—"How did Abboud get so influential in town?"

Dworak—"He's not as influential as he would like you to believe he is."

Coleman—"He's done well though, I believe."

Dworak—"Oh, yes."

Coleman—"Nice guy, too. Let's say Abboud can get Adams."

Dworak—"I can insure it, too. I know some people who will do some talking to Adams for a double-barrel effect."

Coleman—"Veys?" What kind of a guy is he?"

Dworak—"He's a big dumbbell."

Coleman—"Is he?"

Dworak—"Personally, he's a nice guy but he doesn't know which end is up."

Coleman—"I'll bet I've spent as much money in this as you put in your campaign."

Dworak—"Oh, no."

Coleman—"You don't think so?"

Dworak—"Hell, no."

Dworak—"I'd like to see it go."

Coleman—"That makes two of us. I hate to harp on this same —— subject. What do you think I ought to do? I'll be back in town Monday."

There was a long pause.

Dworak—"You and I talked about a deal last night."

Coleman—"Yeah, what corporation shall I make the check out to?"

Mr. Dworak named a corporation. He then handed Mr. Coleman the name on a piece of paper.

Coleman—"What business is it?"

Dworak—"It's a corporation that advises businesses. Strictly legit."

Coleman—"Can it be done over a period of time?"

Dworak—"Uh huh."

Coleman—"How much should I pay initially?"

Dworak—"I don't know what your financial situation is at all, John."

Coleman—"Well, you know, we're not poor. I could buy the land and sit on it. Well, what do you want? Half down or a third? What are we talking, 20, 25 thousand?"

Dworak—"We talked 25 last night."

Coleman—"How's a third down?"

Dworak—"Okay."

Coleman—"You don't need it until the campaign anyway. And you can trust these people?"

Dworak—"Right."

Coleman—"Why don't we get together Monday?"

Dworak—"Fine."

Coleman—"All right."

Dworak—"Okay."

Coleman—"Thank you for the keys (to the city)."

* * *

September 14

Monday p. m.

Mayor Dworak came to Mr. Coleman's room at 10 p. m. and in the early conversation predicted that he would easily be re-elected. He said that he had contacts in all sections of the city and that they reported he could win without trouble.

Dworak—"Things were real bad a year ago."

Coleman—"Why was that?"

Dworak—"I told you we dumped the chief." (Harold Ostler).

Coleman—"Why the ——

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The John Coleman Story . . . . . Conclusion

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did you dump him? Was it politics?"

Dworak—"The ——— was killing us. He had about 12 stooges, underlings, that were his ——— around town. They wouldn't play ball, screaming that the Legal Department was crooked and everything else. The newspapers had big headlines on the ——— every day. Killing us. I told him to keep those ——— quiet and he wouldn't do it so we had to dump him. It was either him or it was us." (Laughter.)

Coleman—"He didn't do anything wrong?"

Dworak—"No, he didn't do anything wrong."

Coleman—"So what is he doing now?"

Dworak—"He's a captain in the police department. No, we didn't treat him too badly. We just put him some place where he couldn't hurt us—decent hours—we are waiting now for the judge to hand down a decision."

Coleman—"What's the decision going to be?"

Dworak—"It better be with us . . . ."

Coleman — "On what grounds did you say to the court that he was guilty of insubordination?"

Dworak—"He defied written orders."

Coleman—"What kind of written orders?"

Dworak—"About a dozen different orders."

A discussion started about Barney Buttner. The Mayor said that he might be in trouble. He added that he didn't know.

Coleman—"In what way?"

Dworak—"Barney's a crazy ———. I don't have to tell you that. He's a personal friend of mine, too. I appointed him to the ——— job. Give the guy a couple of drinks and he goes crazy."

Coleman—"That's why I didn't go on that trip to Houston."

Dworak—"I heard two stories on that trip to Houston."

Coleman—"What happened? I never heard about it. What happened?"

Dworak—"He just went wild."

Coleman—"He danced with the Andrews sisters. That I heard."

Dworak—"I have been out of town with Barney a few times."

After a discussion of how the Mayor has a cabinet just like the President of the United States, Mayor Dworak said that he had hired a Federal Bureau of Investigation agent (Joseph Thornton) who had quit his post as agent in charge in Portland, Ore., to become director of public safety in Omaha. The Mayor said that he had to fire him.

Coleman—"How could he be a member of the FBI and be such a ———?"

Dworak—"I learned a bitter lesson. Stay away from FBI agents because they are not worth a ———. They are not politically orientated at all. In fact, it ruins them politically."

Coleman—"I had an FBI guy come to me the other day and want to go to work for me."

Dworak—"Tell him to go jump off a bridge."

Coleman—"What were your experiences?"

Dworak—"Well, I hired this guy. There were a few moves I wanted to make politically, uh, for my own benefit and for the benefit of some of my close friends, appointments and promotions and the like. I'd call him in and I'd say, Joe, I would like to take of, uh, this situation. He said, 'I won't do it.'"

Coleman—"Why wouldn't he do it?"

Dworak—"I said What in the hell do you mean you won't do it? He said 'Well, I owe a responsibility to the people of Omaha.' I said, You lousy ——— I said, What do you think I do? Did the people of Omaha hire you or did I hire you? There's a difference. He said "I've had a job since I was seven years old and I refuse to do it.' And I said '——— you. Get out of here'."

Coleman—"Is he a square?"

Dworak—"Yeah, from then on the FBI . . ."

Coleman—"Let me ask you a question straight, man to man. Would you have gone against me on the veto if we hadn't met face to face?"

Dworak—"Yeah."

Coleman—"If I hadn't made a contribution to your campaign you would have vetoed it."

Dworak—"I told you I've got a ——— of a lot of pressure on me right now."

Coleman—"And you would have vetoed it?"

Dworak—"Politically, yes."

Coleman—"You would have?"

Dworak—"Yes."

Coleman—"The check that I make out to this, what's the name of that company? Are they safe?"

Dworak—"No problem."

Coleman—"What?"

Dworak—"No problem — you'll get value received."

Coleman—"Who are the people that own that?"

Dworak—"It's value received."

Coleman—"Who are the people that own it?"

Dworak—"You didn't meet him."

Coleman—"Let's face it. Can he turn on you?"

Dworak—"You want to talk to him?"

Coleman—"Shall we meet here tomorrow evening?"

Dworak—"I can get him on the phone right now."

Coleman—"I don't want to to talk to him now. How long have you been associated with him?"

Dworak—"I want you to talk to him."

Coleman—"No, I don't want to talk to him now. What are we going to talk about? Seriously, I really don't have to. I think he was trying to check on me in one of the banks in Chicago."

Dworak—"I think he would be a lot of help to you, John."

Coleman—"What does he do? How is he in with you? Is he in solid?"

Dworak—"He's one of my advisers."

Coleman—"He is one of your advisers?"

Dworak—"Right."

Coleman—"He's not going to cross you?"

Dworak—"The guy knows a lot about building, finances, the works."

Coleman—"I know what I'm going to build, you know. I just don't need any help."

Dworak—"I know he can be helpful. I know that . . . You are going to have problems in building and . . ."

Coleman—"How?"

Dworak—"You are going to have some one overseeing your construction, aren't you?"

Coleman—"Yeah. We are going to have general contractors."

Dworak—"You will still want some one locally to see that you get what you are paying for, won't you? You just don't throw this stuff out and say 'Go ahead and build it, boys,' and nobody watches it, do you?"

Coleman—"I have an architect here. I have a staff of people that watch. I'm not concerned what he does. The only thing, and I would just as soon, you know, that he does nothing, except, you know what I mean."

Dworak—"There is a lot of stuff that goes on in a community. You need somebody watching everything that goes on. Everything."

Coleman—"Like what?"

Dworak—"From the time that you take out your permits . . ."

Coleman—"Are we going to have problems with permits?"

Dworak—"No."

Coleman—"How's that going to be taken care of? Is that all part of this deal?"

Dworak—"You won't have any problems but you want somebody to look over the local situation such as labor market . . ."

Coleman—"Say I put out to bids and a general contractor gets it, he's responsible for bringing it in at that price."

Dworak—"Yeah, but a contractor can ——— you to death. You're in the racket. You know what somebody can do to you when you're not associated with the local situation. They can ——— you to death. You need somebody here to watch the situation and see that you get what you pay for."

Coleman—"Politically?"

Dworak—"Not only politically but I'm talking about economically."

Coleman—"Let's talk politically. Are they going to, you know, how about the permits?"

Dworak—"This is taken care of tomorrow. That's all."

Coleman—"What do you mean?"

Dworak—"They are not going to put any pressure on you."

Coleman—"How do you know that?"

Dworak—"I'm telling you."

Coleman—"No pressure at all?"

Dworak—"No. You have to build to the codes."

Coleman—"Naturally. How can they put pressure on you even if you build to the codes?"

Dworak—"Oh ———! They can kill you."

Coleman—"Even if you build to the codes, they can kill you?"

Dworak—"Sure."

Coleman—"How do you do that?"

Dworak—"Stop your job—delay you."

Coleman—"Oh, ———. It's all political?"

Dworak—"Delays cost money."

Coleman—"That I know. I've had plenty."

Dworak—"I thought you didn't."

Coleman—"Stop kidding me. In this town I have had plenty of delays. I'm telling you straight. Was the layover (of the voting) a lot of ——— last week?"

Dworak—"Uh, uh. A little."

Coleman—"It was?"

Dworak—"You would have been dead last week."

Coleman—"I would have?"

Dworak—"If the vote had been taken, you would have been creamed."

Coleman then asked about the man the Mayor said headed the corporation to which the campaign contribution was to be sent. The Mayor recommended him highly again and gave some of his background.

Dworak—"You are going to get value received from this guy; he's going to take care of you."

Coleman—"But, I mean, we're talking about 25 thousand bucks."

Dworak—"Right. You got to talk to him, too."

Coleman—"Why?"

Dworak—"To convince yourself."

Coleman—"What if I say I'm not convinced?"

Dworak—"Let's face it . . ."

Coleman—"Forget that. All I am concerned about is this indebtedness to you. You know what I mean."

Dworak — "Don't worry about your . . . This guy is going to give you a service."

Coleman—"No, I'm talking about his indebtedness to you. He won't stab me in the back?"

Dworak—"No, he can't."

Coleman—"Why not?"

Dworak—"How can he?"

Coleman—"Why?"

Dworak—"How can he stab you in any way?"

Coleman — "I don't even want him to meet me."

Dworak—"Well . . ."

Coleman—"There is no reason for him to meet me, really. I don't want him to know who I am."

Dworak—"Well, you got to sign the check, don't you?"

Coleman—"I'll give you the check."

Dworak—"No, just sign it to him."

Coleman—"Will he give it back to you? How will he do that? Cause, you know, I don't want . . ."

Dworak — "You have to have your Federal deductions and all that ———."

Coleman — "Which deductions?"

Dworak—"Income tax and the works. Strictly legit, strictly legal."

Coleman—"That he won't give us the business?"

Dworak—"No. Where in the ——— is Novak?"

Coleman—"I shouldn't tell him (Councilman Novak) about myscontribution?"

Dworak—"No. Don't tell nobody."

Coleman—"Would you have vetoed it if I didn't play ball with you? Seriously, what would you have done?"

Dworak—"Vetoed it."

Coleman—"Just vetoed it?"

Dworak—"That's all."

Coleman—"What would the people say? You know. People wouldn't care?"

Dworak—"They could care less. Call it spot zoning. Call it anything you want."

Coleman—"But you would have vetoed it? . . . Can I pay you 10 per cent of 25 tomorrow? Or do you want something now?"

Dworak—"Do it directly to . . ." Here the Mayor again mentioned the man's name and repeated it as he instructed Mr. Coleman to write the check to him.

Coleman—"I've got a five-thousand-dollar check. You you want to take it and give it to him?"

Dworak—"No. I want you to give it to him directly or sent it through the mail."

Coleman—"Will you bring him up here tomorrow. You don't want me to give it to you?"

Dworak—"No."

Coleman—"You're sure I can trust him now . . . You will bring him up?"

Dworak — "I'll send him up."

Coleman—"What does he look like? How much should I give him? I don't want to get involved with him."

Dworak—"You won't get involved with him."

Coleman—"What!

Coleman—"What's the least amount I could pay him now? Five thousand, is that all right with you, Jim?"

Dworak—"It is."

Coleman—"When do I have to pay the rest?"

Dworak—"Before April."

Coleman—"How shall I pay it?"

Dworak—"It's up to you."

Coleman — "When is the last date you can veto? I want to be square with you when, you know."

Dworak—"About 10 days."

Coleman—"So you will take me on my word that I will give him the balance of the 20. I'll give him the five thousand when?"

Dworak—"Tomorrow."

Coleman—"Tomorrow. And make it out to what? Mr. Dworak named the corporation.

Coleman—"All right. Are you sure that he will give it to you? Every time. Give me the assurance that he's not going to turn on me. How do you know? I'm a little tight but how do you know. You'll send him up here? When?"

There was a long pause.

Coleman — "Seriously, are we in good shape, Jim? Tell me, don't shake your head. Answer me."

Dworak—"What the ——? You got a tape recorder going?"

Coleman—"I'm going to go to the council meeting and sit in the audience." (He was referring to the impending vote on the rezoning case the next day).

Dworak—"Good, you want to come to my office and listen up there?"

Coleman—"Can I?"

Dworak—"Sure."

Coleman—"All right. Maybe that's what I'll do. I don't want any of those newspaper reporters coming up there."

Dworak—"They won't come."

Coleman—"Can you keep them out?"

Dworak—"Yeah . . . Good night, old boy."

* * *

September 15

Tuesday p. m.

Mr. Abboud came to Mr. Coleman's room and several telphone calls were made before the two men started to discuss the rezoning case at Eighty-first Street and Farnam Drive.

Abboud—"Does Don Hunter (Mr. Coleman's attorney) know this money is being paid out?"

Coleman—"No."

Abboud—"You're lying to me."

Coleman—"I'm telling you."

Abboud—"You're lying. How can you sit there and lie?"

Coleman—"Just Carroll (Mr. Coleman's architect) knows."

Abboud—"I want to tell you one thing. I don't go for that stuff when everybody knows what's going on . . ."

The conversation then turned to Councilman Adams.

Coleman—"You got to pay him tonight?"

Abboud—"You can talk to him tomorrow morning but I've got to pay him tonight."

Coleman—"You mean he won't wait for five minutes?"

Abboud — "No. No matter what you do, I've got to give the —— a check."

Coleman—"Did you make it out to him?"

Abboud—"Yes."

Coleman—"Adams Real Estate?"

Abboud—"Yeah."

Mr. Abboud showed the check to Mr. Coleman.

Coleman—"———, five thousand smackeroos. You and I should make money that easy."

Mr. Abboud then told Mr. Coleman that Councilman Adams was immediately available, that he had been waiting in the coffee shop downstairs. When Mr. Adams arrived in the room the conversation was resumed. After some time Mr. Abboud said:

"Ernie, you don't have to sit here if you are tired."

Adams—"Am I boring you?"

Coleman—"How did you like our presentation last week?"

Adams—"That boy is all right."

Abboud—"It stunk!"

Adams—"Very good."

Abboud—"It stunk."

Abboud—(Laughing.) "You could have had Belli out there . . ."

Adams—"What's his name?"

Coleman—"Ron Hunter."

Mr. Adams left soon after. Before he left the room, Mr. Coleman said he saw Mr. Abboud hand Mr. Adams a piece of paper that resembled a check. The following conversation then took place:

Coleman—"Now what if this goes to court? Do you get the money back?"

Abboud—"If you lose it?"

Coleman—"Yeah, didn't you mention it?"

Abboud—"No, did you?"

Coleman—"Yeah. We talked about it."

Abboud — "If we lose in court, I'll get the money back for you."

* * *

At this point The World-Herald decided that the information gathered thus far was of such significance that it should no longer be withheld from the public.

Thus, it was decided to terminate this phase of the newspaper's investigation, and to prepare the John Coleman Story for publication.

The result of these labors has been printed above.

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Floor—Wall—Ceiling
Floor Tile by . . . Armstrong
ASPHALT Ideal for your Basement Rec Room
Save on This Low-Cost Flooring!
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We Have to Offer . . . . . From 5c Ea.
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Priced from . . . . . 9½c Ea.
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Beautiful Colors to Choose From! Adds Sparkle to Your Kitchen or Bath . . . From
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PHILCO S440WA. Truly fine furniture in hand-finished Walnut veneers and solids. All 82 Channel VHF-UHF reception. Disappearing Curtainwood Doors roll away like magic! Finest custom features.
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Besides being good-looking, they're fine conversationalists, too. Prove it with an enjoyable chat by Long Distance. Tonight!
Northwestern Bell
Use area codes for faster service.

Much Colder
By the United States Weather Bureau.
Omaha-Council Bluffs—Much colder tonight. Low near 10 below. Partly cloudy Thursday. High 10 above.
The Weather Everywhere, Page 14.
News summary, Page 2.

Evening World-Herald

WALL STREET EDITION
Final Markets
LATE NEWS

OUR 80TH YEAR—No. 103. Single Copy 10c; 65c in Towns with Carrier Service. Entered Second Class Matter Post at Omaha, Neb. OMAHA, NEBRASKA, WEDNESDAY, DECEMBER 16, 1964—64 PAGES. 5 Published each weekday evening, except holidays at World-Herald Square, Omaha 2, Nebraska. TEN CENTS

Jury Files Bribery Charges Against Mayor, Four Others

Commerce Secretary Quits Post

John Connor Will Replace Hodges

Secretary of Treasury Dillon to resign soon. Story on Page 20.

Washington (AP)—President Johnson announced Wednesday the resignation of Luther H. Hodges as Secretary of Commerce and named as his successor New Jersey industrialist John T. Connor.

Mr. Connor, who will take over the Commerce post on January 15, has been president of the New Jersey drug manufacturing firm of Merck & Co., Inc., since 1955. The 50-year-old executive was active in business groups supporting Mr. Johnson during the Presidential election campaign.

—AP Wirephoto.
Connor . . . Merck.

Mr. Hodges has been Secretary of Commerce since the start of the Kennedy Administration in January, 1960. He told Mr. Johnson he had planned to remain in the post only four years because he soon will be 67 years old.

Mr. Johnson's selection of Mr. Connor is his first designation of a Cabinet officer since succeeding to the Presidency.

Lighting Display Limit Thursday

Thursday is the deadline for receipt of addresses of houses which have outstanding Christmas displays.

Homeowners who are proud of their Christmas lighting may mail their names and addresses to The World-Herald Midwest Home Section.

They will be published Sunday for the guidance of sightseers in Omaha and Council Bluffs.

ATT Picks Romnes as New President

New York (AP)—H. I. Romnes Wednesday was elected president of the American Telephone & Telegraph Co., effective January 1.

Mr. Romnes, 58, who has been vice-chairman of the board, succeeds Eugene J. McNeely, president since 1961. Mr. McNeely, who will be 65 next year, is retiring as an officer, but will remain a member of the board of directors.

Duke 'Tolerates Operation Well'

Houston, Tex. (AP)—The 70-year-old Duke of Windsor underwent a 67-minute operation today for removal of a large blister on an abdominal artery.

"His Royal Highness tolerated surgery well," a hospital spokesman said.

"The resection of the aorta involved an area of 10 to 12 centimeters."

The resection involved the replacement of an aneurysm — a ballooning blister the size of an orange —with a synthetic tube.

The resection of 10 to 12 centimeters is about four to five inches.

The operation began at 7:32 a. m. and ended at 8:39 a. m.

Cold, Colder, Still Colder

Temperatures Off 12 Degrees an Hour

Temperatures began falling across Nebraska and Iowa today as a massive cold wave moved through the Midlands.

Cold air will remain over the two-state region for several days, the Weather Bureau said.

Some light snow or snow flurries may develop in Central and Western Nebraska this afternoon, continue tonight and diminish Thursday.

Omaha and Council Bluffs can expect a low tonight around 10 below zero, forecasters said. It will continue cold Thursday with a high around 10 above.

The Omaha-Council Bluffs temperature stood at 20 degrees at 7 a. m. today. Two hours later it had slipped to eight degrees.

Sub-zero temperatures were common today across the Midlands.

It was 22 below zero at 7 a. m. in Williston, N. D. Sioux Falls, S. D., had a reading of —7 at the same hour and it was one below zero in Norfolk, Neb. At 10 a. m., it was 14 below at Atkinson, Neb.

The five-day outlook calls for temperatures 10 to 15 degrees below normal in Nebraska and five to 10 below normal in Iowa. Temperatures could range from 10 to 25 degrees below normal in extreme Western Nebraska over the period.

Early Leone Lead Falls Far Short

Rome (AP)—Christian Democrat Giovanni Leone led today on the Italian Parliament's first ballot to elect the fifth President of the Republic but fell far short of the required two-thirds majority.

Communist Senator Umberto Terracini ran second, and Foreign Minister Giuseppe Saragat, a Democratic Socialist, was third.

No election was expected on the first three ballots. A two-thirds majority is required on them.

By the fourth or later ballots, requiring only a simple majority, vote trading among the parties might bring a surprise candidate.

Dworak Has a Statement for Newsmen

Hands It to Them at City Hall Office

Mayor Dworak made the following statement today:

"I am truly happy that this fight is finally out in the open.

"This is a wonderful day. Today concludes the secret hearings and the secret World-Herald witnesses, including the secret son-in-law of that newspaper's columnist, a man who hides in Chicago and refuses to testify in public.

"Today concludes the banning of radio and television people from the fifth floor of the Courthouse that is as much theirs as it is yours and mine. Today, freedom of speech and true freedom of the press returns to the city that I love.

"The grand jury could not hear my side of the story because of an illegal gag oath that had never been used by any grand jury before in the history of this state.

"I am sure that you all remember that some time back, a multimillionaire bought a newspaper outright and threatened the mayor of a city because that mayor refused to be dictated to. Let me remind him that another "Mr. K." office said, "We'll bury you." And let me tell him that he still doesn't own this city—the people do. This fight is not over. King Peter Kiewit, believe me when I say: This fight has just begun."

This was a written statement handed to reporters shortly after 11:30 a. m. in the Mayor's office at City Hall. It was dated Wednesday.

Garrotto, Knowles Have No Comment

Presiding District Court Judge Paul J. Garrotto and County Attorney Donald L. Knowles both declined to comment on Mayor Dworak's statement.

Before the grand jury went into session, Mr. Knowles had said all witnesses would take this oath:

"You do solemnly swear that you will keep secret the testimony you are about to give before the grand jury and that you will testify to the truth, the whole truth and nothing but the truth, so help you God."

To Good Fellows—

Help Say 'Hello' to New Omahans

List of contributors on Page 7.

Say "hello" to a new Omaha family.

A mother and her three children moved here from an Army post town after her husband died.

The children are attending school and their mother is trying to earn enough to support them. They haven't lived here long enough to qualify for aid.

This will be a Christmas of firsts for them.

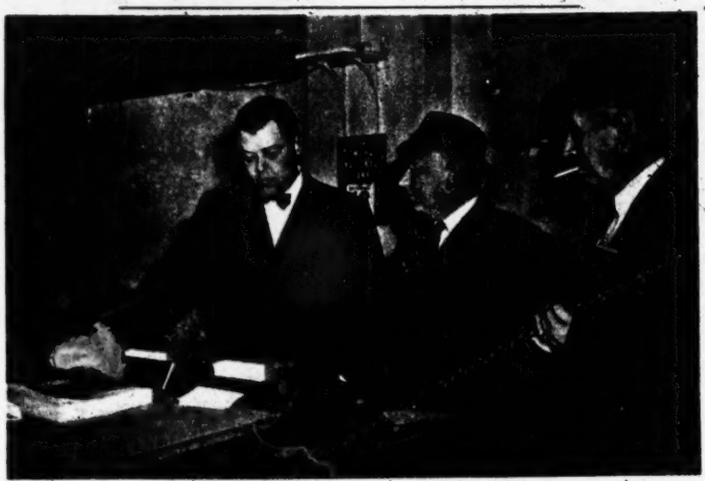
Used to Southern winters, this will be their first chilly Christmas. It also will be their first Christmas season in Omaha and the first without their father.

The World-Herald Good Fellows can welcome these new Omaha youngsters and help other needy children as well.

Send your contributions to The World-Herald Good Fellows, Fourteenth and Dodge Streets, Omaha, Nebr. 68102.

Good Fellows contributed $799.11 Tuesday bringing total donations so far to $10,287.76.

NEW GIFT ideas can be found each day in the World-Herald "Christmas Gift Guide" Want Ads.—Adv.



In Sheriff's office . . . Dworak, Schrempp, Knudtson (from left).

Viet Regime Split Starts

Minister Resigns as Buddhists Fasting

Saigon (AP) — The South Viet Nam Government today showed signs of cracking as five hundred Buddhist monks and nuns began a 24-hour hunger strike.

Reliable sources reported that Phan Tan Chuc, Education and Cultural Affairs Minister, resigned.

He was in disfavor with the Buddhists.

Unconfirmed reports said some other ministers may resign.

The Buddhist hunger strike and one last week end were aimed at toppling Premier Tran Van Huong.

Buddhist Leader Thich Tam Chau declared bigger strikes will be planned if Mr. Huong "continues his lies and distortions against Buddhists and his attempts to disunify us."

Tam Chau, addressing five hundred devotees inside the Buddhist Institute Pagoda, said Mr. Huong was "becoming a dictator like Ngo Dinh Diem and is being helped by foreigners."

This remark was aimed at the United States.

Tam Chau charged Mr. Huong had tried to split the Buddhists by creating the Association of General Buddhism.

Troop Losses Last Week Worst

Saigon (AP) — South Vietnamese troops last week suffered their highest casualties in eight months in the war against the Communist Viet Cong, a United States spokesman said.

Nine hundred eighty-five Government troops were killed or wounded, the spokesman said.

Herod Immortal?

Imagined thoughts of King Herod at the time of the birth of Jesus Christ are detailed in "Witnesses to the Nativity" today on Page 9

* * *

Nancy tells her Aunt Fritzi she's hungry, and has sound backing for her complaint. The comic is on Page 46

Traffic Deaths

Story on Page 54.

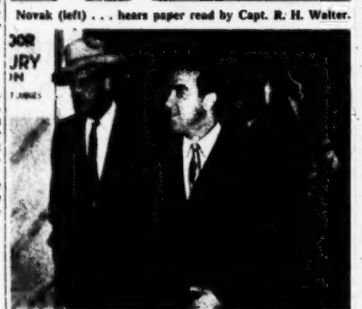
Deaths — Dec. 16, 1964	1963
In Omaha 24	30
In Nebraska 414	325
In Southwest Iowa .. 88	68
In All Iowa 779	653

Temperatures

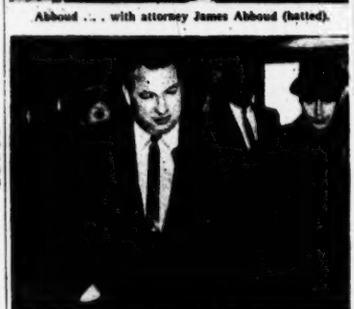
Tuesday		Wednesday	
Hours		Midnight	20
1 p. m.	28	1 a. m.	20
2 p. m.	43	2 a. m.	20
3 p. m.	45	3 a. m.	20
4 p. m.	45	4 a. m.	27
5 p. m.	43	5 a. m.	20
6 p. m.	42	6 a. m.	23
7 p. m.	40	7 a. m.	23
8 p. m.	39	8 a. m.	13
9 p. m.	37	9 a. m.	10
10 p. m.	36	10 a. m.	8
11 p. m.	35	Noon	6
		1 p. m.	6
		2 p. m.	8
		3 p. m.	6

Adams (left), with Walter . . . "I am stunned, I am stunned."

Novak (left) . . . hears paper read by Capt. R. H. Walter.



Abboud . . . with attorney James Abboud (hatted).



—World-Herald Photos.
Buttner . . . Followed by deputy.

What's Next? Arraignment

Five Indicted Persons to Go Before Judge

What are the next legal steps involving the five persons who were indicted by the grand jury Wednesday?

County Attorney Donald L. Knowles said that each will be called before a District Court judge for arraignment. No date has been set yet.

The state law on arraignment reads:

"The accused shall be arraigned by reading to him the indictment, unless the reading shall be waived by the accused where the nature of the charge is made known to him, and he shall then be asked whether he is guilty or not guilty of the offense charged.

"If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made."

Set for Trial

After the arraignment, if the accused pleaded not guilty, his case would be set for trial. The case would be heard by a panel of 12 jurors and two alternates.

The grand jury consisted of 18 regular jurors and three alternates.

Regarding the setting of a trial date, the law states: "The court shall assign such indictments for trial at as early a time in such term as practicable."

Before Judge Paul J. Garrotto, who set a 25-hundred-dollar bond on Mayor Dworak, his attorney, Warren C. Schrempp, said the Mayor was appearing "without in any way, shape or form waiving any objections that we may have to the verdicts of the grand jury or proceedings which gave rise to this indictment."

Similar Statement

Similar statements were made by attorneys who represented the other four who were indicted.

Mr. Knowles said the procedure from now on would be the same as if the County Attorney's office had filed a felony information against some one.

The statutes provide the following penalties that can be levied if convictions are obtained:

—Bribery, accepting bribes: a prison term of not less than one year nor more than five years.

—Attempting to bribe a public officer, soliciting bribes by a public officer: a prison term of one year and a fine not exceeding five hundred dollars nor less than three hundred dollars.

The foregoing does not cover the penalty for conspiracy.

Takes Action in Connection With Zoning

All Released on Bond After Fingerprinting

Copies of the indictments are reproduced on Page 41.

The grand jury today indicted Mayor James J. Dworak in a three-count felony charge. Also indicted:

—City Councilman Ernest A. Adams.

—City Councilman Stephen T. Novak.

—Former Planning Board Member Carville R. (Barney) Buttner.

—Omaha real estate man Ronald J. Abboud.

All were taken into custody, booked, fingerprinted, photographed and released on bond of 25 hundred dollars each. The bonds were fixed by Presiding District Judge Paul J. Garrotto.

The indictments were returned in connection with the John B. Coleman Story.

Adams First

Mr. Coleman, a Chicago developer, had charged that the five men had arranged a series of payments to secure municipal approval for rezoning for a town house development he proposed to build at Eighty-first Street and Farnam Drive.

The arrests were made on papers issued by the court, called "capiases." They were based on the charges listed in the indictments.

Councilman Adams was the first to be taken into custody this morning. Mayor Dworak, Councilman Novak, Mr. Abboud and Mr. Buttner followed in that order.

Jury Foreman Maynard T. Swartz said the jury has recessed indefinitely. He said it will reconvene later.

Taken Into Custody

Mayor Dworak was indicted on three counts:

—Conspiracy to receive a bribe.

—Receiving a bribe.

—Soliciting a bribe.

The Mayor was taken into custody shortly before 10 a. m. at the fire station at Nineteenth and Harney Streets, where he parks his car.

The Mayor, accompanied by attorney Warren Schrempp and Mrs. Dworak and escorted by Chief Deputy Sheriff Jack H. Knudtson and Capt. Art Gall, entered the Courthouse shortly before 10 a. m.

The Mayor, leaving his wife in the Sheriff's office, went upstairs to the sixth floor where deputies were set up to photograph, fingerprint and book the persons indicted.

"I have a paper."

Chief Deputy Knudtson and Captain Gall had gone to the fire station and asked if the Mayor had come in. A fire captain asked if they had an appointment.

"Yes," Mr. Knudtson replied.

A short time later the Mayor drove up with his wife.

Mr. Knudtson approached the car and told the Mayor:

"I have a paper for you. Do you want me to read it here or at the Courthouse?"

The Mayor was silent for a moment, then replied:

"Yes, let's read it at the Courthouse."

The Mayor then asked if

Turn to Page 3, Column 1

The Way to Sell to Farmers

When the need for newer and better farm equipment arises, most farmers like to "shop around" for the equipment they need. They seek both a favorable price and good quality in the machinery they buy. This is the reason so many farmers turn to World-Herald Want Ads. They know they'll find a wide variety of all kinds of farm machinery listed there — at prices they're ready to pay.

If you have farm machinery for sale, put a fast-acting World-Herald Want Ad to work. Telephone your ad, or for further information, write the Farm Advertising Dept., The World-Herald, Omaha, Nebr., 68102.—Adv.

Late Bulletins—

Formosan Defects?

Tokyo (UPI)—Peking radio said late today that Maj. Gen. Cheng I Ming, chief of the Intelligence Bureau of the Nationalist Chinese Defense Department, has defected to Communist China.

* * *

British Trade Trouble Increases

London (AP) — Britain's balance of international trade grew worse in November despite a new 15 per cent surcharge on imports. The adverse balance reached 288 million dollars, in comparison with $257,600,000 in October.

* * *

162 Poverty Projects Added

Washington (AP)—The White House this afternoon announced 162 new war-on-poverty projects costing $82,600,000, scattered through the 50 states and involving seven Federal agencies.

* * *

Markets in Brief

New York—Stocks higher after two successive declines. Closing Dow Jones stock averages: industrials 860.08, up 2.63; railroads 204.88, up 0.27; utilities 154.76, up 0.2].

Chicago—Grain futures generally firm, corn irregular.

Omaha — Fed steers about steady, heifers lower. Hogs show little change. Wheat, oats and rye firm.

Mayor, 2 Councilmen, 2 Others Indicted on Bribery Counts

Continued from Page 1

he could make a phone call to his attorney. He was allowed to do so, using the fire station phone.

Soon Mr. Schrempp arrived and the entire party walked to the Courthouse, entering through the front door.

Councilman Adams was arrested at his home at 4903 Underwood Avenue by Sheriff's Capt. R. H. (Bucky) Walter.

He is charged with the same three counts as the Mayor.

Mr. Adams was taken to the Courthouse at 9:47 a. m. As Captain Walter escorted him past a long line of reporters and photographers, he kept repeating: "I am stunned, I am stunned."

Captain Walter took the Councilman to the county jail, where he was booked, fingerprinted and photographed.

Novak Quiet

Councilman Novak came to the Courthouse with his attorney, James Green.

The indictment against him differed from those against Mayor Dworak and Councilman Adams in that it had two counts of receiving a bribe.

It also listed counts of conspiracy to receive and soliciting a bribe.

Mr. Novak was asked if he had any comment.

"Not right now," he replied.

Mr. Abboud was brought in by Deputy Sheriffs Ted Novaski and Fernando Lecuona about 10:37.

He had no comment.

Mr. Abboud was indicted on seven counts. Three charge receiving a bribe, three charge soliciting a bribe and one charges conspiracy to receive a bribe.

On Four Counts

Mr. Buttner entered the Courthouse about 11:25 a. m., accompanied by his attorney, Alfred Fiedler, and Deputies Lecuona and Novaski. Mr. Buttner came from the Keeline Building across Seventeenth Street from the Courthouse.

He had no comment.

He was indicted on four counts — two of receiving a bribe and one each of soliciting a bribe and conspiracy to receive a bribe.

Mr. Buttner also was taken to the jail for booking, fingerprinting and photographing.

Mr. Knudtson said the procedure is normal in all arrests.

Mr. Coleman's disclosures were published in The World-Herald last September 25. District Court judges ordered a grand jury probe three days later.

The jury was sworn in a month ago today. It heard 35 witnesses and was in session 20 working days before recessing.

Worked 20 Days

The Coleman story as published in The World-Herald:

—Mayor Dworak agreed to accept a 25-thousand-dollar "campaign contribution" and said he would not veto the rezoning of the Coleman property. No payment was made.

—Mr. Buttner received a check from M. Coleman for $177.16 to pay for a Kansas City interlude on a Houston, Tex., trip in July. Mr. Buttner also was to receive five thousand to 10 thousand dollars out of the contractor's profit on Mr. Coleman's project.

—A five-thousand-dollar check was drawn by Mr. Coleman, payable to a third party, who wrote a check for the same amount to Mr. Adam's real estate trust account.

—A two-thousand-dollar check was written by Mr. Coleman to a third party, who in turn wrote a check for two thousand dollars to Mr. Novak.

—Mr. Abboud was the third party, personally and through companies which he heads, in the payments to Messrs Adams and Novak. He was to receive the building contract and a profit of about 10 per cent —100 thousand dollars—on the Coleman project. Mr. Coleman was to see that Mr. Abboud got the contract on a "low bid."

The principals in the case commented after Mr. Coleman's story was made public.

"Mayor Dworak said he was just "playing along" with Mr. Coleman to get evidence against him and to see if any one from the Planning Department or City Council was involved.

Mr. Adams said at that time the check he received from Mr. Abboud was partial payment for a piece of property Mr. Abboud had agreed to buy from him.

Mr. Novak said:

"I have never taken a bribe. I have done nothing wrong."

He said any money he might have received from Mr. Abboud was for real estate transactions and "was not Coleman's money."

Mr. Buttner said:

"There was no pay-off . . . I never made any deal with Coleman . . . As far as I'm concerned no monies were exchanged. No deals were made."

Mr. Abboud has made no public statement.

Testimony before the grand jury remains secret.

Dworak Declines Election Comment

Mayor Dworak was asked at his City Hall office Wednesday afternoon if the charges against him would influence his announced intention to file for re-election to a second term.

He said he had no further comment.

Gugas: Turn City Over to World-Herald

Public Safety Director Chris Gugas appeared at the Courthouse after the Mayor was brought in.

As he stepped out of the elevator on the fifth floor, he declared:

"Boys, the war begins. It's a dirty shame as far as the Mayor's concerned. I think we ought to turn the city, county and state over to The World-Herald."

Mr. Gugas then went to the courtroom with the Mayor, where the Mayor signed a property bond for his release.

State Has No Plans to Enter the Case

Lincoln (UPI)—State Attorney General Clarence Meyer said today his office has been advised of several indictments delivered by the Douglas County District Court grand jury.

He said, however, the state justice department has no plans to participate in the case beyond the grand jury investigation.

Evening World-Herald

OMAHA, NEBRASKA, WEDNESDAY, OCTOBER 27, 1965—76 PAGES. 5

Tape to Play for Coleman 'Bribe' Jury

Statements Given at Trial of 3 Men

Deputy County Attorney James Murphy told jurors in the John B. Coleman case Wednesday they will be given an opportunity to hear an alleged crime being committed.

In his opening statement at the District Court trial of three men under indictment, he said tape recordings will be offered in evidence.

The defendants are former City Councilmen Stephen Novak and Ernest Adams and real estate man Ronald J. Abboud.

Messrs Novak and Adams were indicted by a grand jury on one count of soliciting a bribe. Mr. Abboud was charged on three counts.

Portions Deleted

Mr. Murphy outlined the state's case as it will develop from the witness stand and from the tapes.

Earlier, Judge John Murphy deleted portions of the tape concerning matters not directly involving the three defendants.

Selection of the jury was completed Tuesday. Two alternates—a man and a woman—also were seated.

Before the jury was picked, 44 persons were questioned.

"This case goes back to October, 1963, when a man named John B. Coleman first came to Omaha," said Mr. Murphy. There occurred a series of events thereafter which led us to this courtroom today."

Mr. Murphy told, step-by-step, what happened when Mr. Coleman, Chicago developer, sought a townhouse apartsite at Eighty-first Street and Farnam Drive.

6.6-Acre Site

When he first came to Omaha, said Mr. Murphy, he was referred by an official of the Omaha National Bank to Cecil Johnson, an attorney. Mr. Johnson helped him find the 6.6-acre site and Mr. Coleman signed an option to buy. Ephraim Marks, attorney for Mr. Novak, represented owners of the tract.

Eventually, Mr. Johnson turned the Coleman business over to another attorney, Ronald Hunter, who left Mr. Johnson's office to establish his own office.

There followed a series of meetings on the proposed rezoning for the project which ultimately resulted in contact with C. R. (Barney) Buttner, at that time a Planning Board member.

Mr. Murphy said Mr. Buttner asked Mr. Coleman's help in obtaining a loan for one of his projects and Mr. Coleman agreed.

Trip to Houston

Later, Mr. Buttner asked for and received permission from Mr. Coleman to take a trip to Houston, Tex., to look over a similar townhouse project. Mr. Buttner took along Mr. Novak and Mr. Coleman paid the bill.

Mr. Marks eventually introduced Mr. Coleman to Mr. Ab-

Turn to Page 8, Column 1

Coleman Case Jurors to Hear 'Bribe' Tapes

Continued from Page 1.

boud, Mr. Murphy continued.

Mr. Murphy told how Mr. Coleman first went to an Omaha detective agency, Samardick and Company, in an attempt to tape-record conversations with city officials and others in connection with his zoning case.

A device was installed at the Blackstone Hotel but it didn't work.

"Frustrated, Mr. Coleman turned to The World-Herald," said Mr. Murphy. The deputy explained that Mr. Coleman had talked about his problems with Chicago newspaper officials and they had advised him to contact The World-Herald.

Met With Editors

Mr. Murphy said Mr. Coleman met with newspaper editors and Bill Billotte, a reporter, was called in. Mr. Billotte, he said, recommended that Joseph Thornton, former FBI agent and ex-Public Safety Director, be hired.

Arrangements were made, Mr. Murphy said, to install listening devices in Mr. Coleman's Blackstone Hotel suite. A recorder was placed in a near-by unit.

Mr. Murphy then related the series of meetings which were recorded.

At one time, Mr. Murphy said, discussion centered around the possibility that Mr. Abboud would get the general contract for the townhouse project expected to cost one million dollars to $1,500,000; Mr. Adams was to be paid five thousand dollars and Mr. Novak, 10 thousand dollars.

Several Checks

He described several check transactions and closed by saying to the jury:

"You will hear the actual words of Novak, Adams and Abboud in this case."

Thomas Kelley, speaking for Mr. Adams, said there is nothing improper about City Councilmen speaking with persons outside of City Hall.

He said any real estate man is interested in a prospect.

Referring to Mr. Coleman, he said: "This young man out of the East chose not to go to law enforcement officers but to the news media. We'll find out that not once did Mr. Adams solicit Mr. Coleman for any bribe. You're going to be incensed as much as I at this young genius. I don't think we need his kind of people."

James Green, talking for Mr. Novak, said that Mr. Thornton was fired as Safety Director and "the evidence will show he had an ax to grind."

He added: "John Bennett Coleman did not come to Omaha to do Omaha any good. From his own lips you will hear that he came here to try and corrupt some one."

He said Mr. Coleman "poured liquor with a lavish hand to get people talking." But he added that his client, Mr. Novak, doesn't drink.

Mr. Green said "this group, shall we call them enforcers, without going to any Federal, state, county or city law enforcement officers . . . went into the business of eavesdropping."

He said Peter Kiewit, principal owner of The World-Herald, "also had some interest in elections and perhaps the evidence will show he had an ax to grind."

Copies Made

He said that no law enforcement official has yet heard the original tapes.

Copies were made, he said, "on a machine that can be stopped and started" by Mr. Thornton and "who else but Bill Billotte."

He accused the Omaha National Bank of a "breach of trust." A bank officer is to testify concerning check transactions.

"This was possible because one of the bank officers is an officer of The World-Herald," he said. "The evidence will show this was a plan of intrigue."

Ephraim Marks, attorney for Mr. Abboud, said it is true he introduced his client to Mr. Coleman. But that was the end of his contact, he said.

"I am willing to submit to a lie detector or any other test on this proposition. My conscience is clear," he said.

Only Pawns

He charged there was a "well-thought-out conspiracy to corrupt public officials in Omaha."

"Mr. Novak, Mr. Abboud and Mr. Adams were only pawns and expendable in a grasp for political control of this community," Mr. Marks said.

He charged The World-Herald and Mr. Coleman "took the law into their own hands . . . to make a newspaper splash and discredit the City Administration."

He concluded: "Remove this blot on Omaha which resulted from national publicity. Who did it? The World-Herald. This gave Omaha a black eye all over the country."

Mr. Coleman was scheduled to be the first state witness this afternoon.

Mr. Murphy of the County Attorney's office and Judge Murphy are not related, it was pointed out at the trial.

Defense Questions Coleman

Chicagoan Tells of Bribe Case

By Larry Wilson

The cross-examination of John B. Coleman, Chicago investor, continued Friday in the District Court trial of Ronald Abboud and former Councilmen Ernest Adams and Stephen Novak.

The three are accused of soliciting bribes in connection with Mr. Coleman's zoning case.

James Green, attorney for Mr. Novak, asked if Mr. Coleman had ever made complaint to law enforcement officials.

He said he had not. At one point he said, "in effect" he was advised not to trust certain local enforcement officers, and mentioned political factors.

He was questioned about drinking at his hotel room and his use of profanity at the series of recorded meetings.

Drinks Served

"Drinks were served at many of the meetings," Mr. Coleman said. "I had liquor in my room. They (guests) were free to help themselves."

Asked Mr. Green: "Do you ever talk differently when you are drinking—use language a little different?"

Said Mr. Coleman: "It depends on the circumstances and environment."

He said when he first contacted The World-Herald about the case, Executive Editor Frederick Ware advised him to go to the Federal Bureau of Investigation.

"I was informed this matter was not in the FBI's jurisdiction," he added.

In response to Mr. Green's question he said he "has no agreement—oral or written—with Peter Kiewit" who is principal owner of The World-Herald.

Not an Actor

Ephraim Marks, representing Mr. Abboud, asked Mr. Coleman if he had ever done any acting in school or amateur productions. The answer was "no."

"Did you ever seek immunity from prosecution?" Mr. Marks asked.

"I did not," said Mr. Coleman.

Mr. Marks produced Mr. Coleman's hotel liquor bills and they were accepted in evidence. The state made no objection. The bills were for several bottles of scotch Mr. Coleman had had sent to his rooms at various times.

Hotel room bills also were introduced. They included Mr. Coleman's suits and others used for recording conversations.

The name of "Keith Goodman" was used at times for the latter quarters, he said.

Governor Informed

Mr. Coleman said he told Governor Morrison about the case the morning of the day the story appeared in The World-Herald.

Mr. Coleman said he never "pushed" drinks. He said he mixed his own and any guest could do likewise.

The questioning by Mr. Marks was to continue this afternoon.

Mr. Coleman Thursday described how checks were written to Mr. Abboud, real estate man. He told of arrangements for passing on money to the ex-city officials.

Mr. Coleman wrote one check for two thousand dollars to Abboud Investment Company and another to the Guarantee Company for five

Turn to Page 4, Column 3

Defense Lawyers Question Coleman in Bribery Case

Continued from Page 1.

thousand dollars. Both are Mr. Abboud's companies.

He Saw Check

He testified that the two thousand dollars was to be a partial payment to Mr. Novak and the five thousand dollars was for Mr. Adams.

Mr. Abboud was to get a profit of about 100 thousand dollars from building Mr. Coleman's proposed townhouse apartment project.

Mr. Coleman said that he saw Mr. Abboud with a check for five thousand dollars made out to the Ernest Adams Real Estate Trust.

The check carried Mr. Abboud's signature, he said.

Later, he said, he "saw Mr. Abboud hand Mr. Adams a piece of paper resembling a check."

On another day, he said, Mr. Adams informed him the Abboud check had been returned for insufficient funds.

He Stopped Payment

On September 22, 1964, Mr. Coleman said:

"Mr. Abboud requested my check in the amount of eight thousand dollars."

Asked Deputy County Attorney James Murphy: "Did you have conversation in regard to the purpose?"

Mr. Coleman replied: "Yes, the eight thousand dollars was the balance due Mr. Novak based on the original 10-thousand-dollar amount."

He added that he stopped payment on the check.

The story was published by The World-Herald on September 25 last year.

Thomas Kelley, representing Mr. Adams, asked:

"Did you ever offer Mr. Adams anything?"

"I did not," replied Mr. Coleman.

"Did Mr. Adams ever ask for any money?"

"He did not," Mr. Coleman said.

Mr. Kelley asked if he had ever inquired about property near Seventy-second and Maple Streets.

Mr. Coleman said "No."

One of the Coleman checks has written on its face: "Earnest Money—Seventy-second and Maple."

'Did Not Make It'

Mr. Coleman said he did not make the notation.

Asked Mr. Kelley: "Did you tell Mr. Adams you had built apartments at Houston, Fort Worth and Atlanta?"

Said Mr. Coleman: "I believe I said I had an interest in this type of apartment at Atlanta."

Mr. Coleman said he reviewed with his attorneys The World-Herald's story of the investigation prior to its publication.

Attorneys questioned Mr. Coleman at length about his background and personal life. He also was quizzed about notes he used during the testimony to refresh his memory or dates and events.

He said they were prepared jointly with Ronald Hunter, his Omaha attorney.

Mr. Hunter is scheduled to be the next state witness.

Tape Carried to Court by Joe Thornton

11 Reels Delivered in Brown Briefcase

By Larry Wilson

Eleven reels of tape-recorded conversations were delivered to the courtroom Friday in the District Court trial of three men facing charges of soliciting bribes in the John B. Coleman case.

Joseph Thornton, former FBI agent and Public Safety Director, personally carried in the tapes in a brown briefcase.

He was then excused and will be recalled later.

Mr. Coleman's Omaha attorney, Ronald Hunter, was on the witness stand as the first week of the trial ended. It resumes at 9:30 a. m. Monday before Judge John Murphy.

Much of Mr. Hunter's testimony was detail involving the taping of conversations at Mr. Coleman's hotel room. The tapes have not yet been offered in evidence but the Thornton appearance was considered a step in that direction.

Hunter Present

Mr. Hunter told how two microphones — described as "miniature broadcasting stations" were placed in Mr. Coleman's hotel room. Another room was used — either above or below the Coleman quarters — for operating receiving and recording equipment, he said.

Mr. Hunter said he was present at all recording sessions. With him part of the time was Mrs. Irene Provost, a World-Herald secretary, he testified.

Present at all sessions have been the three defendants — Ronald Abboud and former Councilmen Stephen Novak and Ernest Adams.

Mr. Hunter gave the time and place of each of the series of recorded meetings and identified voices.

Mystery Lady Explained

The tapes, he said, were kept in the custody of Mr. Thornton.

A "mystery lady," mentioned briefly Thursday, was explained by Mr. Coleman before he completed his testimony.

Under cross-examination Thursday by Thomas Kelley, attorney for Mr. Adams, he had said there was a lady visitor to his hotel room but that he did not know her name. Then the subject was changed.

Deputy County Attorney James Murphy asked him Friday:

"Mention was made of a lady at your hotel room. Did

Turn to Page 2, Column 6

Tape Brought by Thornton

11 Reels Delivered in Brown Briefcase

Continued from Page 1.

you bring this lady to your room?"

"No, I did not," replied Mr. Coleman.

"Was she an acquaintance of yours?" Mr. Murphy said.

Asked About Drinks

"No, she was not," said Mr. Coleman.

"Were you ever alone in the room with the lady?"

"No."

"Who brought the lady to the room?"

"Mr. Buttner." The reference was to C. R. (Barney) Buttner, former Planning Board member.

Mr. Murphy also recalled that under cross-examination, Mr. Coleman was asked about drinking at the room. The defense in opening statements accused Mr. Coleman of "lavishly pouring drinks to get people to talk."

Said Mr. Murphy:

"Weren't you a guest at the home of Mr. Marks and weren't you offered a drink by Mr. Marks?"

Hunter to Resume

"Yes, I was," said Mr. Coleman. Ephraim Marks is attorney for Mr. Abboud.

James Green, representing Mr. Novak, asked: "When Mr. Marks poured you a drink at his home the conversation was not being recorded, was it?"

Said Mr. Coleman: "No."

Mr. Hunter said he was retained by Mr. Coleman to handle an application for rezoning of a tract at Eighty-first Street and Farnam Drive for an apartment project.

He will continue his testimony after the week-end recess.

'John, Can't Take Check'

Bribe Jury Completes Six Reels of Tape

By Larry Wilson

"John, I can't take a check."

Those words were among those emerging from tape recordings Tuesday as the John B. Coleman case continued in District Court before a jury of six men and six women.

Charged with soliciting bribes in the case are Ronald J. Abboud, real estate man, and ex-Councilmen Ernest Adams and Stephen Novak.

According to previous testimony, Mr. Coleman and Mr. Novak were present when the recording was made.

A voice resembling that of Mr. Coleman answered: "All right. What shall I do?"

There was talk about a cash payment and the Coleman voice asked if a check should be made out to "Abboud."

The Novak voice objected to that and the Coleman voice asked:

"What if I put 'commission' on it?"

The Novak voice again stressed the importance of a cash transaction.

Mr. Coleman testified earlier that Mr. Novak was to get 10 thousand dollars for a favorable vote on his zoning application. He said Mr. Adams was to get five thousand dollars and Mr. Abboud a profit of about 100 thousand dollars from his apartment construction contract.

On another tape, with Messrs Coleman, Abboud and Novak present, the Coleman voice asked:

"How much does Adams want?"

A voice resembling that of Mr. Abboud replied: "Five."

Six of the 11 reels of tape admitted into evidence had been heard at the noon recess.

On Monday, the first day of the tapes, spectators said they could only make out a word

Turn to Page 3, Column 3

'John, Can't Take Check'

Bribe Jury Completes Six Reels of Tape

Continued from Page 1

here and there and the audience lost interest quickly.

Only a handful of persons were on hand Tuesday. But more of the taped conversations could be heard over the courtroom speaker system. Many were studded with earthy language.

Although there was earlier testimony as to the date and those present at each of the recording sessions, jurors had to rely on their memories and make their own interpretations.

Each tape was identified only by exhibit number and with no other explanation.

At no time did jurors ask to have any portions repeated.

The jurors got a chuckle at one point when music came from the play-back machine. It had been explained before that during one recording session there was a problem when music unexplainedly started coming through the pickup system.

Courtroom Almost Eerie at Times—

Tape Playing Near End in Coleman Bribe Case

By Larry Wilson

The playing of tape-recorded conversations may be completed today in the trial of three men charged with soliciting bribes in the John B. Coleman case.

They are Ronald J. Abboud, Ernest Adams and Stephen Novak.

The courtroom was almost eerie at times Tuesday as the play-back machine slowly moved through the pile of magnetic tapes.

The witness stand was empty. Attorneys sat silently at their table, making no objections and asking no questions. The court reporter, usually taking down every word of testimony, was called in only to record the changing of the tapes.

Presiding Judge John Murphy had no motions or legal points to decide.

At times jurors leaned forward in their seats in an effort to hear better the words coming from the battery of six loudspeakers facing the jury box.

Judge Murphy lengthened the court day and shortened the lunch period in an effort to conclude the case.

The state is expected to rest its case after the tapes are completed. Then the defense takes over.

A major point Tuesday morning was this statement, coming from one tape: "John, I can't take a check."

According to earlier testimony, Messrs Coleman and Novak were present.

The Coleman voice said: "All right, what should I do . . . What if I put 'commission' on it?"

The voice of the answering party said that only cash would be acceptable and that an attorney had told him he might be "buried" otherwise.

The Tuesday afternoon tape included a meeting between Mr. Coleman, Jay Carroll, his architect, and Messrs Abboud and Novak.

There was money talk, sex talk, party talk, liquor talk and political talk.

The conversations were laced with profanity.

Over and over, there was "nose counting" of possible votes on Mr. Coleman's rezoning project before the City Council and talk of who was going to be paid what.

Personal remarks, many uncomplimentary, were made about a number of persons not involved in the trial.

Mr. Coleman has testified he agreed to pay Mr. Adams five thousand dollars and Mr. Novak 10 thousand dollars for their support. Mr. Abboud was to get approximately 100 thousand dollars for building Mr. Coleman's proposed apartment development.

At one time there was consternation when a World-Herald car was spotted at Mr. Coleman's hotel parking lot, according to one tape.

Worries lifted when it turned out the car carried staff members on another assignment.

Conversation:

"They weren't checking on us were they?"

"No, they are only here in the building—the lobby."

Tape Voice: 'Easy Money'

'$5,000 for Adams' Is Discussion Topic

Other details on Page 27.

"Five thousand smackeroos . . . you and I should make money that easily . . ."

The words came from a tape Wednesday in the John B. Coleman case in the trial of Ronald J. Abboud, Ernest Adams and Stephen Novak.

Previous testimony placed Messrs Abboud and Coleman in the room at the time.

The discussion centered around a payment of five thousand dollars to Mr. Adams. Mr. Coleman told the jury he paid that amount to get Mr. Adams to vote favorably on his zoning application.

A voice resembling that of Mr. Coleman made the "smackeroo" statement.

An Abboud-like voice said: "No matter what you do . . . I gotta pay him tonight . . ."

Said the Coleman-like voice: "Won't wait five minutes . . . the --- -- - -----."

Other conversation:

"How did you make it out (check)?"

"Adams Real Estate . . ."

The tape was to continue this afternoon.

Good Morning
By the United States Weather Bureau.
Omaha-Council Bluffs—Mostly fair. Highs in middle 40's, low 25 to 30. Cloudy, warmer Thursday.
The Weather Everywhere, Page 18.
News Summary, Page 2.

Omaha World-Herald

Nebraska's Only Full Wirephoto Service. Seven News Services Cover the World.

Sunrise Edition

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Guilty, Guilty, Guilty, Says Jury as 3 in Coleman Case Get Verdict in Tense Court

Pope 'Had Visions in May of Shooting Persons on Floor'

But Says He Bought Gun to Kill Turtles

Kansan's Composure Almost Breaks

By Bill Billotte

World-Herald Lincoln Bureau, 901 Federal Securities Building.

A hushed courtroom Tuesday afternoon heard Earl Duane Pope tell from the witness stand how he had visions late last May of his shooting men "and one woman" as they lay on the floor and of impulses to kill two younger brothers whom he said he loves.

And twice during the afternoon testimony the composure of the graduate of McPherson (Kans.) College almost melted as his voice faltered and he lowered his head.

The first time was when Pope was relating how he came upon a younger brother fishing while he (Pope) was carrying a .22-caliber rifle.

'I Wanted to Shoot'

"I was standing away from him and all of a sudden I just wanted to shoot him," Pope testified.

"I pointed the gun (and here Pope's voice broke) at him." Pope said.

"Why didn't you shoot him?" asked Robert Crosby, chief attorney for the defense.

"I don't know what I did—I know I didn't shoot him," Pope responded.

"Of all the people in your family, who is closest to you?" Mr. Crosby asked.

"Dennis," Pope replied.

"Then why did you point the gun at him?" Mr. Crosby pressed.

"I don't know why, I just did," Pope said.

Incident at Pond

"Duane, late in May of this year—tell the jury what also happened," Mr. Crosby said.

"Well, it had been raining heavy, and I was carrying my brother Eric on my shoulders and we came to a pond on my dad's land," Pope said. "All of a sudden I wanted to throw him in the water."

Mr. Crosby's questioning continued:

Q.—How old is Eric?

A.—Three.

Q.—Did you throw him in?

A.—No.

Q.—Did the feeling go away?

A.—Yes.

Q.—Did you think about these feelings?

A.—They passed away.

Q.—Did you tell any one about these feelings?

A.—No.

Questions About Dating

Pope's revelations about his visions of killing men and a woman as they lay on the floor came after Mr. Crosby had questioned Pope at length about his dating a Melinda Hanson, the young woman who had attended McPherson College and then had gone to Fort Worth, Tex.

Pope had testified that he and Miss Hanson had been writing to each other daily and that they planned to see each other again, possibly in June when she returned to Hutchinson, Kans.

"Did there come a time, Duane, when you would think of something else besides Melinda or your Caterpillar tractor?" Mr. Crosby asked.

"Yes," Pope said, "once in a while I had a picture in my mind that I was shooting somebody."

"When did the first pictures come into your mind of you shooting somebody?" Mr. Crosby asked.

"In the middle of May or later," Pope answered.

'Visions at Night'

This series of questions and answers followed:

Q.—Somebody, or more than one?

A.—Three or four.

Q.—What kind of people—men and women or just men?

A.—Yes, men and one woman.

Q.—Standing or lying on the floor?

A.—Laying on the floor.

Q.—When did the visions

Turn to Page 8, Column 7

Oxygen Is Lifted; Ike Signs Letters

Augusta, Ga. (UPI)—Doctors disclosed Tuesday that former President Eisenhower has been out of an oxygen tent for almost three days, and has resumed some work he had started before suffering two mild heart attacks last week.

The absence of the oxygen tent apparently improved Mr. Eisenhower's chances of a Thanksgiving reunion with his family.

An Army spokesman said Mr. Eisenhower had spent a good day and that he "signed a few letters he had dictated prior to his illness, and then dictated several other personal letters."

39 Counties Sign 10 Pct.

Enough to Suspend Income Tax Work

By Ellis Rall

World-Herald Lincoln Bureau, 901 Federal Securities Building.

The referendum drive to block the state income tax ended successfully Tuesday with enough signatures and qualifying counties obtained to suspend implementation of LB 797 until after a public vote next November.

Only the formality of a formal announcement after some additional counting of petitions remains.

Thirty-nine counties passed the requirement of signatures totaling 10 per cent of the last vote for Governor in each. The requirement was 38 counties.

'Enough Cushion'

Lancaster County will become the fortieth county when 1,340 more valid signatures are gleaned from the 1,839 remaining to be checked.

Personnel in the Secretary of State's office predicted there was more than enough cushion of submitted signatures for Lancaster to meet this requirement.

More than 54 thousand of the total 57,809 required as the second condition of suspending the law, have been validated.

Franklin County proved to be the swing county Tuesday morning when it qualified in the 10 per cent group. Phelps County followed in the afternoon as additional petitions came in from there.

Drive Succeeds

A last-ditch effort to push Lancaster County into the select group also was apparently successful.

Lancaster is expected to join this list of counties which are in the 10 per cent groups:

Adams, Box Butte, Brown, Burt, Butler, Cass, Cherry, Colfax, Dawes, Dodge, Douglas, Dundy, Garden, Hooker, Jefferson, Keya Paha, Knox, Lincoln, Madison, Platte, Red Willow, Richardson, Rock, Sarpy, Thomas, Washington, Custer, Gosper, Boone, Dakota, Franklin, Logan, Nuckolls, Phelps, Saline, Stanton, Webster, York and Howard.

Temperatures

Readings Taken at Eppley Airfield Tuesday

Noon	38	7 p. m.	36
1 p. m.	39	8 p. m.	35
2 p. m.	40	9 p. m.	33
3 p. m.	41	10 p. m.	29
4 p. m.	38	11 p. m.	28
5 p. m.	36	Midnight	28
6 p. m.	34	Wednesday	
		1 a. m.	27

Yanks Maul Hanoi Force of Regulars

Entire Red Regiment Reported Wiped Out

From World-Herald Staff Writer Leonard Wilcox.

American troops won their first battle test showdown with regular North Vietnamese troops Tuesday by wiping out an entire Hanoi regiment that had marched into South Viet Nam to help the Viet Cong guerrillas.

The body count of Communist dead in the three-day battle of Chu Pong Mountain soared to 869, but officials estimated that 13 hundred or more had been killed.

But it also was the war's costliest fight in terms of American dead. The Americans were determined that as long as the Communists were willing to stand and fight, United States troops would stay in the area until the last of the North Vietnamese was gone.

Missile Sites Raided

Dominating the news from other war sectors was a bombardment by eight United States Air Force F-105 Thunderchiefs of two North Vietnamese surface-to-air missile sites, one 35 miles northwest and the other 32 miles northeast of Hanoi.

An American spokesman said a missile fatally crippled one of the planes, and the pilot, who bailed out over the Gulf of Tonkin, was dead in the water when rescue crewmen reached him. The plane was the eighth American craft known to have been downed by missiles, which the Russians supply to the North Vietnamese.

Other Thunderchiefs were reported to have smashed two key bridges of the highway and rail network by which Red China moves in military supplies. Briefing officers said 24 destroyed the Cao Nung railway bridge, 31 miles from the Chinese border, and 61 dropped parts of the Lang Luong highway bridge, 52 miles north-northeast of Hanoi. These planes ran into heavy flak as they dived with three-thousand-pound bombs, the officers said, but all returned.

Suicidal Attack

The heavy fighting at Chu Pong ended Tuesday morning after the Communists, in a last-ditch suicidal attack, threw wave after wave of troops into the path of American machine-gun and rifle fire, trying desperately to overrun the troops of the United States First Air Cavalry. They died trying.

In one area, the Americans mowed down more than two hundred Communists whose bodies were stacked five and six-high outside the United States perimeter.

Sgt. Amalio Rodriguez of Columbus, Ga., a 17-year veteran of the cavalry, said: "It seems to me these people are more fanatical than the ones we fought in Korea. They attack when the odds are im-

Turn to Page 5, Column 1

Warming Trend Enters Midlands

Clouds and a warming trend are expected to move into the Midlands today in the wake of a cold snap that sent temperatures plummeting Tuesday night.

Omaha and Council Bluffs will have a high in the middle 40's and a low of 25 to 30 under mostly fair skies today, the Weather Bureau said. Increasing cloudiness and a rising thermometer are expected Thursday.

The five-day outlook is for above-normal temperatures.

President Will Seek Laws to Curb the All-White Jury

Washington (UPI)—President Johnson announced Tuesday that he will ask Congress in January for new Federal legislation "to prevent injustice to Negroes at the hands of all-white juries."

He declared: "We intend to make the jury box in both state and Federal courts the sacred domain of justice under law."

The President's announcement was contained in remarks prepared for a reception for delegates attending two days of planning sessions, starting Wednesday, on the White House conference on civil rights to be held next spring.

Mr. Johnson said this nation had awakened to the cry for justice for Negroes but that millions of Negroes "remain in bondage."

The President said that for settlement of racial issues "one clear concern is the jury—the cornerstone of our system of justice.

"If its composition is a sham, its judgment is a shame," he said. "And when that happens, justice itself is a fraud casting off the blindfold and tipping the scales one way for whites and another way for Negroes."

All Planning Steps to Gain Another Trial

Adams Quotes Bible Following Verdict

Former City Councilman Ernest A. Adams quoted from the Bible Tuesday in commenting on his District Court conviction of soliciting a bribe in the John B. Coleman case.

Said Adams:

"This is my answer to the power-hungry perpetrators of this 14-month episode. I shall quote from the Bible, Mark 8:36, which says: 'What shall it profit a man if he gain the whole world and lose his own soul'."

Adams asked who he meant by "power-hungry perpetrators," replied:

"Figure that out for yourself, will you?"

Adams said he felt "pretty good," but added:

"I could feel a lot better; it's understandable."

"I'm innocent," he said. "I'll go all the way to prove it."

His attorney, Thomas Kelley, said he was "disappointed" in the verdict.

* * *

Abboud

Ronald J. Abboud, asked to comment on his conviction, merely shook his head.

His attorney, Ephraim L. Marks, said he would have "no statement at all." He mentioned later that the filing of a motion for a new trial of Abboud would follow "as a matter of course."

* * *

Novak

"No comment" to all questions was the only remark made by former City Councilman Stephen T. Novak following the verdict.

He only nodded when some one suggested that it had been a long and tiring trial.

"Mr. Novak will have no comments," his attorney,

Green . . . Briefs prepared.

James Green, said. "He's my client. I'm his lawyer."

Following a short consultation with Judge John Murphy, Mr. Green agreed to hold a press conference outside the courtroom.

He said his first step in behalf of his client will be to file a motion for a new trial. Asked when, he said: "Not long, we already have many of the briefs prepared."

The briefs, he added, were prepared prior to the trial.

He said he was disappointed in the verdict. "I'm always disappointed. I thought Mr. Novak was innocent. Of course, my fate was on his side."

* * *

Coleman

John B. Coleman, Chicago, Ill., investor and central figure in the case, was not available at his Chicago office.

Traffic Fatalities

Story on Page 8.

Deaths—Nov. 16, 1965	1964
In Omaha 30	30
In Nebraska 335	381
In Southwest Iowa . 45	72
In All Iowa 680	711

Convicted—

Ernest A. Adams—Found guilty of soliciting five thousand dollars from Chicago investor John B. Coleman. Adams, about 68, served three terms in the Nebraska Legislature. Served as Douglas County Treasurer for seven years from 1943 to 1950 and was elected to the City Council in 1961. Lives at 4903 Underwood Ave. Former real estate man.

Stephen T. Novak—Real estate broker named to City Council in November, 1962. Also served on the Urban Renewal Advisory Board from January to November, 1962. Lives at 5226 Q Street. Is 40 years old. Found guilty of soliciting a bribe of 10 thousand dollars from Mr. Coleman.

—World-Herald Photos by Ed Roth and Pat Hall.

Ronald J. Abboud—Real estate man. Was found guilty on three counts of aiding and abetting Adams and Novak on the payoffs. Operates the Omaha Land Development Company, the Investors Holding, Inc., and the Guarantee Company. Abboud, 31, lives at 8073 Arbor Street.

2 Ex-Councilmen, Abboud Convicted of Soliciting a Bribe

By Larry Wilson

Guilty. Guilty. Guilty.

Those verdicts were returned by a District Court jury Tuesday afternoon in the bribery solicitation trial of two former City Councilmen and a real estate man in the John B. Coleman case.

The date was exactly one year after the Douglas County grand jury convened to hear the Chicago investor's story of what happened to him in Omaha when he attempted to get a tract of land rezoned for a townhouse apartment project.

The grand jury indicted five men. The first three to stand trial were found guilty as charged:

Ernest Adams—soliciting a bribe of five thousand dollars from Mr. Coleman.

Stephen Novak—soliciting a bribe of 10 thousand dollars from Mr. Coleman.

Ronald J. Abboud, the real estate man—aiding and abetting Adams and Novak in the solicitation, three counts.

According to state law, the penalty for the offense is confinement of one year and a fine of not less than three hundred dollars or more than five hundred dollars.

* * *

Tension Builds

Bonds of 25 hundred dollars each were continued on each man. Defense attorneys have 10 days to file motions for a new trial.

The jury of six men and six women deliberated about eight hours, eliminating time spent eating and sleeping.

The complex case went to the jury at 5:24 p. m. Monday. At 2:45 p. m. Tuesday, the buzzer sounded, which meant a verdict had been reached.

As word spread, the courtroom started filling with spectators.

Tension built as the clock ticked on. One by one, the defendants and their attorneys filed into Courtroom No. 1, the scene of many major trials over the years.

Adams was the last to arrive and, at 3:34, the jurors marched single file from the jury room to the jury box.

The suspense continued to build as District Court Clerk Sidney Gottneid conducted the required routine of calling the jury roll.

* * *

Little Emotion

The foreman, Joseph A. Archibald, Jr., of 827 North Forty-sixth Street, then handed the written verdicts to Judge John Murphy. He looked them over and passed the papers on to Mr. Gottneid. He read the decisions.

The Adams verdict was first—then Novak—then Abboud.

Had Adams and Novak been found not guilty, Abboud would have automatically gone free since his charges were tied in with those of the other two defendants.

The defendants heard the decision with no show of emotion. All sat in their chairs, faces impassive.

The defense attorneys—Thomas Kelley, James Green and Ephraim Marks—then asked that the jurors be polled individually.

For each of the three defendants, this question was asked: "Was and is this your verdict . . .?"

Each juror stood and said, "Yes."

Judge Murphy then commented: "Ladies and gentlemen, I can and do discharge you. I want to particularly thank you for your services in what has been a difficult case . . ."

* * *

'Evidence There'

The jurors retired to the jury room, put on their coats, picked up their suitcases and quickly left.

Mr. Archibald said the jurors decided among themselves not to discuss the case with the press.

He said no count was made of the number of ballots taken.

The trial opened on October 25.

The prosecution was handled by Douglas County Attorney Donald Knowles, Chief Deputy Arthur O'Leary and Deputy James Murphy.

Said Mr. O'Leary: "We are always satisfied with a jury's verdict and we are satisfied with this case. The evidence was there."

After Mr. Coleman came to The World-Herald in 1964, an investigation was conducted. The Coleman story was published on September 25, 1964. A grand jury returned indictments.

Tape recordings of conversations in Mr. Coleman's room with the defendants and others were used as evidence in the trial. For nearly three days, the jurors heard 11 reels of tapes.

* * *

Through Abboud

Mr. Coleman testified he passed payoffs through Abboud to Adams and Novak.

Adams said the money he got from Abboud represented a down payment on the sale of his home.

Novak said the money he got from Abboud represented

Turn to Page 2, Column 4

Dworak, Now in California, Still Has No Date for Trial

Former Mayor James J. Dworak, now living in California, is charged with soliciting a bribe in the Coleman case.

His trial has not yet been scheduled.

The County Attorney's office is appealing to the State Supreme Court a District Court ruling dismissing bribery, solicitation and conspiracy charges against Carville R. (Barney) Buttner, former Planning Board member who was one of the five men named by John Coleman in the rezoning case.

Jury Finds Trio Guilty in Coleman Bribe Case

Continued from Page 1.

his share of a commission on a farm sale.

Other members of the jury, in addition to the foreman: Marie Panek, 3819½ North Twenty-fourth Street; Alfred Nielsen, 2732 North Sixty-fourth Street; Mrs. Helen Kalous, 6002 South Thirty-third Avenue; Frank J. Neuvirth, 4917 Grand Avenue; Mrs. Maxine Murkison, 5820 South Fifty-first Avenue.

Mrs. Catherine Monico, 2414 South Eighteenth Street; Mrs. Gordon Mills, 8606 Blondo Street; Mrs. Alma Hunt, 3263 Jackson Street; Lawrence E. Gruber, 7301 Valley Street; Emmett Carey, 1611 Frederick Street; Mrs. Kathleen Brogna, 2731 B Street.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 287

RONALD J. ABBOUD,
Petitioner,

vs.

STATE OF NEBRASKA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

RICHARD J. BRUCKNER and
WARREN C. SCHREMPP
1100 Farm Credit Building
Omaha, Nebraska
Attorneys for Petitioner

Law Briefs—OMAHA LINO-SLUG PRINTING CO., 413 So. 15th St.

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner prays that this Court grant rehearing of its Order of October 9, 1967, denying the petition for writ of certiorari, — U.S. —; and that a writ of certiorari issue to review the judgment of the Supreme Court of Nebraska, in the above entitled case, as prayed for in the petition filed June 24, 1967.

REASON FOR GRANTING REHEARING AND ISSUING THE WRIT

With the denial of certiorari in this case, the Nebraska Supreme Court decisions in the cases of *State v. Adams,* 181 Neb. 75, 147 N.W. 2d 144 (1966);

State v. Abboud, 181 Neb. 84, 147 N.W. 2d 152 (1966); and *State v. Novak,* 181 Neb. 90, 147 N.W. 2d 156 (1966), stand as the law in Nebraska on the issues of eavesdropping, the right of privacy, grand jury selection, right to counsel and prejudicial publicity.

Petitioner's grounds for rehearing, of substantial and controlling effect, are as follows:

1. The Nebraska Supreme Court opinions[1] in this case approve the unauthorized recording of another's voice by electronic eavesdropping devices. Petitioner contends this is an invasion of the Constitutionally protected right of privacy under the Fourth Amendment to the Constitution.

In the present case, the record shows that the Omaha World Herald newspaper and a private citizen, without the aid, consent or knowledge of any law enforcement agency, set up electronic eavesdropping devices in a rented hotel room. Public officials and petitioner were invited to this room and were broached on the subject of, and readily offered, bribes; and all

[1]The opinion of the Supreme Court of the State of Nebraska was entered on December 16, 1966, and is reported at 181 Neb. 84, 147 N.W. 2d 152. Petitioner's case was consolidated for trial with indictments against Ernest Adams and Stephen Novak; and although each defendant appealed separately, in petitioner's case, the Supreme Court of Nebraska did not consider assignments of error common to the three appeals and discussed in the other opinions. It limited its opinion in petitioner's case to assignments of error not disposed of in the other opinions. Petitioner has, therefore, printed the opinions and judgments of the Supreme Court of Nebraska in all three cases in Appendix "A" to the Petition For Writ Of Certiorari.

of their conversations were recorded without their knowledge or consent. These recordings, containing hearsay statements, profanity and extra-judicial declarations of other individuals, who were not witnesses at the trial, were received in evidence and played for the jury in their entirety.

The present case is distinguishable from *Lopez v. United States,* 373 U.S. 427 (1963), where this Court held a government agent carrying a miniature tape recorder was lawfully in defendant's room because he had been invited there by defendant, and no Constitutional rights of defendant were impaired. Here, petitioner and others were lured to an electronically eavesdropped room, their conversations were recorded without their knowledge and the recordings were in the sole possession of the newspaper and other private individuals until trial time and then offered and received into evidence. This, we maintain, was a violation of the Fourth Amendment right of privacy; and the recorded evidence should have been excluded under *Silverman v. United States,* 365 U.S. 505 (1961).

The Nebraska Supreme Court opinions set a precedent for private individuals' electronic eavesdropping, and thereby justify concealed or contact microphones, permitting private individuals to set a trap, gather evidence, build a case and thereby violate a person's absolute right of privacy against any invasion of his person, house, papers and effects. The Nebraska Supreme Court opinions create the real and ominous

dangers that accompany the use of electronic eavesdropping devices and the erosion of Fourth Amendment protections.

2. The Nebraska Supreme Court, in this case, approved the systematic exclusion of certain classes of persons by unauthorized voir dire examination in empaneling grand jurors. The Grand Jury Board sent check sheets to prospective jurors, and then conducted a voir dire examination, using these sheets, where petitioner and others similarly situated, were identified as persons accused of crime; and all who knew petitioner and the others were disqualified from service, thereby creating an imbalance because those acquainted with the World Herald stories concerning the events in petitioner's case, and individuals hired by that newspaper to set up the events, were not disqualified.

Furthermore, the grand jury selected was caused not to be proportionately representative of the population from which it was drawn, in that members of certain races and classes were systematically excluded, in violation of *Thiel v. So. Pacific Company*, 328 U.S. 217.

All of the foregoing facts concerning the selection of the grand jury were alleged in petitioner's Plea In Abatement; and the State demurred. The demurrer was sustained. The Nebraska Supreme Court affirmed. Petitioner was therefore denied his Constitutional right to due process and equal protection under the Fourteenth Amendment.

3. Under Nebraska law, as established by this case, a person being investigated by a grand jury can be summoned before that grand jury and compelled to take an oath of secrecy, and can be denied the right to counsel. This is in direct conflict with this Court's decisions in *Gideon v. Wainright,* 372 U.S. 235; *Escobedo v. Illinois,* 378 U.S. 478; and *Miranda v. Arizona,* 384 U.S. 436.

In the present case, the record establishes that the investigation had centered on petitioner, the grand jury had been informed he was a person accused of a crime, he was summoned to appear before the grand jury to testify, required to take an oath of secrecy and denied the right to have counsel with him when he appeared. This was in violation of petitioner's right to effective assistance of counsel, guaranteed by the Sixth Amendment and Fourteenth Amendment.

Petitioner was thus placed in a situation where not to speak would seem to confess guilt to the grand jury. If he appeared without counsel and gave full utterance, he may build a case against himself and forfeit his privilege against self-incrimination. The state of this law cannot be permitted to stand in Nebraska.

4. Petitioner's Constitutional rights to due process and equal protection were denied when the Omaha World Herald newspaper instituted a calculated campaign to have petitioner indicted; set the stage by electronically eavesdropping a hotel room; recording

conversations; transcribing the purported tapes; editing the transcripts; assigning voice identifications and editorial matter and publishing the purported conversations in a full 5½ page story, all without the knowledge or consent of any law enforcement agency. This newspaper then continued its campaign against petitioner daily, in the only daily newspaper in Omaha, Nebraska, during the calling of the grand jury, its investigation prior to petitioner's trial; and it gave a play-by-play account during petitioner's trial, while the jury was not sequestered, and published its transcripts of the hotel room conversations, which transcripts had been carefully edited, and other history of the case; none of which was received in evidence during the trial except in the form of recordings which were inaudible, garbled and unidentified as to voices. This newspaper prosecuted the case.

In quantum of reported material, virulence of content and recklessness of method, we believe the actions and publicity in the case at bar far transcend the cases of *Sheppard v. Maxwell,* 384 U.S. 333; *Irvin v. Dowd,* 336 U.S. 716; and *Estes v. Texas,* 381 U.S. 532. In addition to this general condition, petitioner was grievously victimized by the deliberate, premeditated, specific malfeasance of one newspaper whose asserted purpose was to "get" petitioner.

Petitioner had a right to have the integrity of his jury protected; and nothing in the record can be offered to show a waiver of that right. *Fay v. Noia,* 372 U.S. 391.

Therefore, in the present case, we contend:

(a) The pre-trial publicity produced petitioner's trial and, at the same time, precluded the assembly of an impartial grand jury or trial jury.

(b) The publicity during trial prevented the maintenance of an impartial jury, if one had been empaneled.

(c) The contrived and malicious conduct of the Omaha World Herald before and during trial operated to deprive petitioner of due process of law and equal protection of the law.

CONCLUSION

For the reasons set forth above, and in the Petition For Writ Of Certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Nebraska.

Respectfully submitted,

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November 2, 1967

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition For Rehearing Of Order Denying Petition For Writ Of Certiorari is presented in good faith, and not for delay; and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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